

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5100 OF 2024

Aftab Ali Hishamoddin Shaikh	.. Applicant
Versus	
Union of India and Anr.	.. Respondent

CRIMINAL BAIL APPLICATION NO. 5407 OF 2024

Shabit Ali Azhar Sayyed	.. Applicant
Versus	
Union of India and Anr.	.. Respondent

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- Mr. Anish Pereira a/w Ms. Ashwini Achari and Mr. Devashish Dhanjode i/b Mr. Taraq Sayed, Advocates for Applicant.
 - Mr. Balraj B. Kulkarni, APP for State.
 - Ms. Manisha Jagtap, for Respondent No.2-NCB.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025

P. C.:

1. Heard Mr. Pereria, learned Advocate for Applicant; Mr. Kulkarni, learned APP for State and Ms. Jagtap, learned Advocate for Respondent No.2-NCB.

2. Applicants - accused have filed above captioned Applications for regular bail in connection with Crime bearing File No.NCB/MZU/CR-43/2020 registered with Narcotics Control Bureau for the offences punishable under Sections 8(c) r/w 20(b) (ii) (C), 27, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Facts in the present case are identical therefore the two Applications are heard and decided together.

3. Both the Applicants have been apprehended together on receipt of specific intelligence information that they would be arriving in Mumbai by train along with their family members including children. Copy of seizure memo is appended at Page No.33 of the Application from which it is seen that both the Applicants have been apprehended and detained by the prosecution between 23:30 hrs and 23:45 hrs of on the intervening night of 12.12.2020 and 13.12.2020. Arrest memo of both the Applicants are appended to the chargesheet and Application filed before the Court appended at page No.64 and 66 of the Application from which it is *prima facie* seen that both the Applicants have been arrested on the following day after about 25 hours of they having been detained. Time of arrest of Applicant Accused No.1 is 23:30 hrs on 13.12.2020 and time of arrest of Applicant Accused No.2 is 23:45 hrs on 13.10.2020 (there appears to be a typographical mistake).

4. Ms. Jagtap, learned Special PP would persuade the Court to consider the fact that Applicants were apprehended with 6 Kgs of Charas which admittedly is commercial quantity and therefore rigour of Section 37 would apply in the present case. She would submit that the alleged contraband has been recovered and received from two cartons which were carried by Applicants by train. She would submit that other co-passengers who were travelling with the Applicants were

given notice under Section 67 and enquiry was conducted only on the following day due to which there is a delay in the arrest of the Applicants as said notices were itself issued at 10:00 hrs on 13.12.2020.

5. Be that as it may, the memo of arrest of both the Applicants appended at page No.64 and 66 of Application *prima facie* show that they have been arrested more than 24 hrs after they were detained by the prosecution. *Prima facie* fundamental rights of the Applicants enshrined under Article 21 and 22(2) of the Constitution of India has thus stood violated.

6. This Court in similar circumstances in the case of *Peter Chiuwkudi s/o Onye Npeet Vs. Narcotics Control Bureau and Anr*¹, *Shabbir Usman Shaikh Vs. Union of India & Anr*². And *Hussainbi Faqeer Sahikh Vs. Union of India & Anr*³ have taken a similar view while considering the arrest of the Applicants therein after a hiatus of more than 24 hrs has held it to be violative of their substantive fundamental rights provided in the Constitution. That apart in the present case there are two other reasons which impel me to consider the Bail Applications of the Applicants. Applicants are in long incarceration pending trial and the list of the witnesses appended by

¹ Bail Application No.3295 of 2022

² Bail Application No.731 of 2024

³ Bail Application No.2835 of 2023

the prosecution to the chargesheet is 24. Charges have not been framed yet and in that view of the matter both the Applicants have made out a case for bail.

7. Hence, both Bail Applications are allowed subject to the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (vi) Applicants shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments,

if they do so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

8. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

9. Bail Applications are allowed and disposed.