

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 371 OF 2025

Sunday Joan Embaje @ Bobo

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Vinod K. Chauhan a/w Mr. Gaurav Borse, Advocate for Applicant
- Ms. Savita M. Yadav, APP for Respondent - State
- Mr. Kishor Desai, PSI, Pairavi Officer, Dindoshi Police Station, Mumbai

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 30, 2025

P. C.:

1. Heard Mr. Chauhan, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in C.R. No. 323 of 2023 (now NDPS Special Case No. 1727 of 2023) registered by Dindoshi Police Station under Sections 8(c) r/w 21, 22, 22(c) and 29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short, "**NDPS Act**"); under Section 12(1)(g) of the Passport Act, 1967 and Section 14 of the Foreigners Act, 1946.

3. Applicant is a foreign national. He is arrested on 29.04.2023 and as on today he is in incarceration for a period of 2 years.

4. Applicant is arraigned as accused No.4. There are total 6 accused in the present case. Case of prosecution against Applicant is that in the enquiry under Section 67 of NDPS Act accused No. 3 disclosed name of present Applicant - accused No. 4. When Applicant was apprehended and arrested, 20 grams of alleged contraband i.e. MD was recovered from his possession which is admittedly of intermediate quantity. In that view of the matter, Mr. Chauhan would submit that rigors of Section 37 would not apply. Insofar as trial is concerned, charge is not framed neither the trial has commenced thus extending ignominy of Applicant in prison further.

5. Ms. Yadav, learned APP has vehemently opposed the release of Applicant on bail primarily on the ground that Applicant being a foreign national would be a flight risk and would abscond as also re-offer himself. She would submit that 3 out of 6 accused persons in the present case are foreign nationals and Applicant has been illegally residing in India and in that view of the matter, he has violated provisions of Section 14 of the Foreigners Act, 1946 as also provisions of Passport Act, 1967. She would submit that Applicant has given incorrect disclosure of his passport having been expired and his Application for extension being pending whereas in another statement he has stated that his passport was lost. She would submit that in

that view of the matter, this Court should not indulge and present Application be rejected.

6. I have heard the rival submissions and perused the record of the case. *Prima facie*, it is seen that drug abuse is a menace to the society and large number of foreign nationals from a particular country i.e. Nigeria are involved therein. Such is the case with respect to the Applicant as also other co-accused persons who are arraigned as accused Nos. 5 and 6 before me in the present case. Be that as it may, insofar as indictment of Applicant and his arrest is concerned, the law of land needs to be followed scrupulously and as it is argued before the Court Section 50 of NDPS Act has not been complied with at all insofar as Applicant is concerned. This is *prima facie* a substantive transgression at the threshold which this Court has repeatedly noted in several Bail Applications coming before the Court. Another prime submission made by Mr. Chauhan is that when Applicant was arrested, he was found in conscious possession of 20 grams of the alleged contraband i.e. MD but the inventory panchnama escalates and hikes the said contraband recovery from Applicant to be of 107 grams which *prima facie* itself is an aberration noticed on the face of record. Having noticed the aforesaid transgressions and considering long incarceration of Applicant in prison pending trial despite he being a foreigner, this court is of the opinion that Applicant has made out a

case for grant of bail. Needless to state that apprehension expressed by learned APP with respect to violation of the provisions of Passport Act as also the Foreigners Act can be looked into by the prosecution by taking appropriate steps against the Applicant. Applicant is therefore directed to be released on bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 50,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant 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 he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence 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 his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail;
- (x) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the

Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*¹

7. 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.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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1 Criminal Appeal No. 2814-2815 of 2024 decided on 06.01.2025