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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 828 OF 2025

Amol Laxman Arjugade

.. Applicant

Versus

Union of India and Anr.

.. Respondents

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- Mr. Ayaz Khan a/w Ms. Zehra Charania, Mr. Dilip Mishra and Ms. Mallika Sharma, Advocates for Applicant.
 - Mr. Rushikesh Munde, SPP i/b Mr. Tejas Bhattacharya, Mr. Shatabdi Netke, Advocate for Respondent No.1 – Union of India.
 - Mr. Balraj B. Kulkarni, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 21, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Mr. Munde, learned SPP for Respondent No.1 – Union of India, Mr. Kulkarni, learned Advocate for Respondent No.2 – State.

2. There are in all 4 Accused persons in the present crime. Applicant – Accused No.1 has filed this Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with File No. SD/ INT/INV/NCCP-01/2023-24 R & I for the offences punishable under Sections 8 (c) r/w 21 (a), 22(c), 23(a) (c), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS’). Applicant is arrested on 01.12.2023 and he is incarcerated for 1 year 3 months and 20 days.

3. It is prosecution case that Accused No. 3 booked a parcel from Netherlands containing certain contraband in the name of the Applicant. The parcel was intercepted by prosecution officers of Respondent based on specific intelligence received by Preventive Officer of NCCP indicating possibility of MDMA tablets being smuggled to India in the parcel bearing tracking No. RT56082NL at the Foreign Post Office, Mumbai. It contained contraband which tested positive for 45 grams of MDMA, 0.64 grams of Cocaine and 0.59 grams of Heroin

4. Upon attaining satisfaction with regards to presence of prohibited substances in the parcel, a team led by PO Naveen Kumar was directed to conduct controlled delivery of the said contraband which failed twice between 21.11.2023 and 28.11.2023. On 29.11.2023, a phone call was made by Accused No. 4 to the FPO asking the parcel to be handed over to his representative upon furnishing a copy of Aadhar Card of the addressee i.e. Applicant - Accused No.1, this request was denied. Subsequent to the aforesaid, on 30.11.2023 Applicant himself reached the FPO to collect the parcel where he was apprehended. On inquiry about any other person accompanying him, he pointed towards Accused No. 2 who was walking on the street near the FPO. This led to detention and subsequent arrest of Applicant.

5. Mr. Khan, learned Advocate for the Applicant would submit

that Applicant is falsely implicated in the present crime. He would submit that Applicant had neither booked the parcel and nor did he have knowledge of its contents. He would submit that the parcel was booked by Accused No.3 in Applicant's name and Applicant went to collect the parcel on the instructions of his senior i.e. Accused No. 4. He would submit that before Applicant could collect the parcel, Accused No. 4 instructed one of his employee Piyush (whose statement has been recorded) to collect the parcel by impersonating him, which would *prima facie* show that Applicant himself was genuinely unaware of the same.

5.1. He would submit that prosecution has relied upon Applicant's statement recorded under Section 67 of the NDPS Act on 01.12.2023 appended at page No. 83 and on perusal it is clearly evident that Applicant had no knowledge of the contents of the parcel, hence this itself *prima facie* shows and reflects the innocence of Applicant in alleged crime. To support his above submissions he has referred to and relied upon the decision of the Supreme Court in the case of *Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat*¹ and specifically to paragraph No. 22 of the said decision which reads thus:-

“22. The burden of proof cast on the accused under Section 35 can be discharged through different modes. One is that he can rely on the materials available in the prosecution evidence. Next is, in addition to that, he can elicit answers from prosecution witnesses through cross-examination to

¹ 2000 (2) SCC 513

dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in the prosecution case or in the prosecution evidence are such as to give reasonable assurance to the court that the appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence.”

5.2. Next, he would submit that the Seizure Panchanama appended at page No. 65 indicates that amongst the contraband recovered from the parcel, 45 grams of MDMA is of commercial quantity while Cocaine and Heroin are of small quantity. He would draw my attention to the glaring error in the prosecution case, as certification by the Magistrate under Section 52A (3) dated 06.12.2023 appended at page No. 113 completely omits 45 grams of MDMA contraband which renders the prosecution case unsustainable on the face of record. He would draw my attention to the forwarding Memo appended at page No. 114 which indicates that 45grams of MDMA was forwarded for testing making the prosecution case therefore highly questionable. He would submit that absence of certification of 45 grams of MDMA constitutes a clear non-compliance and infraction of the mandatory provisions of Section 52A (2) and (3) of the NDPS Act as also a clear infraction of Rule 3 (5), Rule 8 and Rule 18(1) of the NDPS (Seizure Storage, Sampling and Disposal) Rules, 2022.

5.3. He would submit that even in the best possible case of

the prosecution, they have failed to meet the threshold that would be reasonably sufficient to curtail liberty of Applicant. He would submit that in so far as Applicant is concerned there is clear absence of *mens rea* which cannot be ruled out *prima facie* especially when the parcel is booked by another person. Hence he would submit that prosecution has failed to prove *mens rea* or nexus of Applicant to have knowledge of the alleged crime.

5.4. He would submit that Applicant is a well-educated person with deep roots in Society and has no criminal antecedents. He would submit that Applicant is arrested on 01.12.2023 and he is incarcerated for 1 year 3 months and 20 days. He would submit that Accused Nos. 2 and 4 have been granted bail by this Court by order dated 11.02.2025 which makes a ground of parity for Applicant. Investigation being completed, chargesheet being filed, commencement and completion of trial in the near foreseeable future is doubtful. Hence he would urge the Court to allow the Application.

6. Mr. Munde, learned Special Public Prosecutor appearing for Respondent No. 1 - Narcotic Cell Customs Preventive Rummaging and Intelligence Wing, Mumbai Customs, Zone – III, places on record Affidavit of Mr. Abhishek Jain, Deputy Commissioner of Customs, R&I, Mumbai Customs dated 19.03.2025. He would submit that Applicant has played a crucial role in this crime and he was well aware of the

parcel received in his name from which recovery of alleged contraband is made. He would submit that Applicant in his statement has admitted having receiving the parcel from abroad on an earlier occasion i.e. on 30.11.2023 in his name booked by Accused No.4 which indicates a similar *modus operandi* and establishes his knowledge and role in the present crime.

6.1. He would submit that this was a case of controlled delivery wherein FPO officials went to the residence of Applicant however his residence was found locked on two occasions between 23.11.2023 and 28.11.2023 and hence suspicion arose. On 29.11.2023, Accused No.4 made a conference call alongwith Applicant on phone and persuaded the post man to allow the said parcel to be collected by a third party. It is only when the post man refused to oblige Applicant had no option than to personally collect the controlled delivery of the parcel and he was apprehended. Hence this itself shows and reflects primary role played by Applicant. He would submit that as Applicant and Accused Nos. 2 and 4 are childhood friends they are well acquainted with each other and they are a part of the conspiracy and their CDR details corroborate and reflect the conspiracy.

6.2. He would submit that as commercial quantity of contraband is recovered from Applicant provision of Section 29 of the NDPS Act is invoked in the chargesheet and also rigours of Section 37 will apply to the present case as also the presumption under Section 35

will come into play. Hence he would urge the Court to reject the Application.

7. Mr. Kulkarni, learned APP for Respondent - State would oppose the narrative of Mr. Khan. He would submit that the offence is serious in nature. He would submit that involvement of Applicant is established during investigation. He would submit that the alleged parcel is *prima facie* addressed in his name which show and reflect his primary involvement in alleged crime. He would submit that the act of Applicant persuading the postman alongwith Accused No. 4 to handover the parcel to a third party itself clearly reflects that he wanted to play behind the curtain however due to postman's refusal he was forced to collect the parcel in person. Hence he would submit that Applicant was actively involved in transaction of alleged contraband in connivance with other co-accused persons. He would submit that Applicant's defense of not being in conscious possession and having no knowledge of the alleged contraband is clearly hit by Section 35 of the NDPS Act. Hence he would urge the Court to reject the Application.

8. I have heard the learned Advocates at the Bar and with their able assistance perused the record of the case.

9. *Prima facie* on perusal of the record of the case it is seen that Seizure Panchanama dated 21.11.2023 appended at page No. 65 records recovery of three contraband materials in the parcel. However certification of the Magistrate under Section 52A(3) of NDPS Act dated

06.12.2023 appended at page No. 113 *prima facie* does not mention the alleged commercial quantity of 45 grams of MDMA recovered. Furthermore, the certificate fails to certify the correctness of the sample drawn and photographs taken, *prima facie* constituting a gross violation of the mandatory provision under Section 52A of the NDPS Act alongwith infraction of Rules 3(5), 8 and Rule 13 of the NDPS (Seizure Storage, Sampling and Disposal) Rules, 2022. This would be *prima facie* fatal to the prosecution case altogether.

10. However on perusal of the forwarding Memo appended at page No. 114 it is *prima facie* seen that the three alleged contraband were forwarded for testing. This dichotomy / discrepancy is *prima facie* evident. *Prima facie* there is no material placed on record by prosecution to show that Applicant had knowledge or was in conscious possession of the alleged contraband in question. While complicity of Applicant can be proved at the stage of trial, what is important is that there is no evidence of any financial trail linking him to Accused No.3 who booked the subject parcel containing the alleged contraband. *Prima facie* reliance placed on CDR details do not draw any inference of Applicant's involvement in the crime. *Prima facie* it is pertinent to note that there is no cogent evidence to establish that Applicant had at any point of time was involved in the alleged crime. Merely making submissions across the bar that Applicant has played a primary role in the alleged crime is not enough. Applicant is incarcerated for 1 year 3

months 20 days pending trial and has no criminal antecedents further persuades me to consider the Applicant's case.

11. Attention is drawn to decisions of this Court in the case of *Zadi Elayee Sande & Anr. Vs. The State of Maharashtra*² (Coram: Bharati Dangre, J.) and *Jahangir Abdul Rehman Shaikh Vs. The State of Maharashtra*³ (Coram: Manish Pitale, J.) where the Court in similarly placed circumstances held in favour of the Accused considering glaring discrepancies in following the statutory prescribed procedure.

12. In the following decisions of the Supreme Court and various High Courts concerning such detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Courts have in the backdrop of the aforementioned propositions exercised its unfettered jurisdiction and discretion in releasing an undertrial on bail on account of long incarceration by using its discretionary powers.

13. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*⁴ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

2 BA. 2796 of 2021, decided on 04.10.2022.

3 BA. 1589 of 2024, decided on 26.06.2024.

4 2022 SCC OnLine SC 2068

14. In the case of *Babor Ali Mondal Vs. State of West Bengal*⁵ the Supreme Court considering the incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year and 4 months.

15. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*⁶ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of the alleged contraband poppy straw.

16. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*⁷ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted him bail who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

17. From the above, it is apparent that inspite of the stringent test to be met by the Accused person under Section 37 of the NDPS Act for being released on bail, it has been held that the same does not fetter grant of Bail to the Accused person on the ground of undue delay in completion of trial. It has been held that incarceration for substantial period of time generally militates against the right to speedy justice and right to life and liberty guaranteed under Article 21 of the Constitution of India and hence conditional liberty must override

5 Criminal Appeal No. 3349 of 2024

6 Cri. Appeal No.1204 of 2024

7 BA No.713 of 2024 decided on 20.01.2025

the statutory embargo under Section 37 of the NDPS Act.

18. In the above *prima facie* facts and circumstances of the present case the Applicant before me has made out a case for bail. In the absence of criminal antecedents, co-accused Nos. 2 and 4 having being released on bail by this Court persuades me to consider Applicant's case on the ground of parity also. Investigation being completed and chargesheet being filed and commencement and completion of trial in near foreseeable future being doubtful entitles the Applicant for grant of bail

19. The Bail Application stands allowed on the following terms and conditions:-

- i. Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- ii. After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- iii. Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- iv. 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;

v. Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

vi. Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

vii. Before his actual release from jail, Applicant shall furnish their address where he proposes to reside after his release from jail, to the concerned Police Station and also to the trial Court; and

viii. 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.

20. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

21. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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