IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3935 OF 2025

Mohan Babulal Jain ...Applicant
Versus
Union of India ...Respondent

Mr. Aabad Ponda, Senior Advocate a/w Mr. Prasanna Namboodri, Mr. Ayaz Khan, Ms. Pratibha Namboodri, Mr. Rishabh Sinha, Ms. Pallavi Dabak and Ms. Nakshatra Mahadik, *for the Applicant.*
Mr. Jitendra B. Mishra a/w Ms. Sangeeta Yadav, Ms. Ashutosh Mishra and Mr. Rupesh Dubey*, for the Respondent No.1.*
Ms. Megha S. Bajoria*, APP for the Respondent - State.*

CORAM DR. NEELA GOKHALE, J.
RESERVED ON: 13TH NOVEMBER 2025
PRONOUNCED ON: 18TH NOVEMBER 2025

JUDGMENT:-

1. The Applicant seeks his release on bail in connection with NDPS Case No.1543/2025, pending before the Special Judge for NDPS, at Greater Mumbai, for the offences punishable under Sections 8(c) r/w 23(c), 26, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (‘**NDPS**’) r/w Rule 53 and 58 of the NDPS Rules made thereunder.

2. The facts of the case, in brief are as under:-

i) On a specific intelligence received by the Commissioner of Customs (Export), Air Cargo Complex, Sahar, Mumbai, that an export consignment was carted for export by M/s. Naprod Life Sciences Pvt. Ltd., comprising a psychotropic substance namely 'Ketamine', without export authorisation / license / NOC of the Central Bureau of Narcotics, the consignment was traced and tracked in the Indian Customs Electronic Data Interchange System (ICES) on 24th January, 2025. On the directions of the Addl. Commissioner of Customs, an alert was invoked against M/s. Naprod and as directed, the said consignment was put on hold. The said consignment was being sent to M/s. Macro Customs Consultants LLP through the Customs Broker (CB).

ii) The officers of Special Intelligence and Investigation Branch (‘SIIB’) (Export), ACC, Mumbai, intercepted this consignment at the Mumbai

International Airport. The same was examined under Panchanama dated 28th January, 2025, and it was found that the consignment consisted of 25 brown colour packages. Upon examination of the goods, it was found that there were about 5000 vials of Ketamine Injection BP of 500 mg/10 ml in the packages. The same is of commercial quantity.

iii) An Application dated 27th January, 2025, was moved by an employee of the CB - M/s. Macro Customs Consultants LLP to the SIIB officers seeking a direction to cart the consignment Back to Town (BTT). The Application was put on hold by the Custom authorities on 28th January, 2025. The reason given in the Application was that due to delay in flight schedule, the booked flight was canceled and the next flight being available only in the following week, it was not desirable to keep the Cargo in the custody of the Custom officers and to avoid the demurrage charges, it was decided to take the Cargo back to town to await the next flight.

iv) Ketamine being a psychotropic substance under the NDPS Act, a no objection certificate / export authorisation from the Narcotics Commissioner is required to export the said substance. Admittedly, M/s. Naprod did not have any export authorisation certificate and hence, the goods were seized by the Custom authorities. The statutory provisions of the NDPS Act were complied. Summons were issued to M/s. Naprod. One Mr. Anil Pal, Assistant Manager (EXIM) co-accused appeared before the officials as a authorized representative of M/s. Naprod and recorded his voluntary statement under Section 67 of the NDPS Act r/w Section 108 of the Customs Act, 1962 on 29th January, 2025. Summons were also issued to the Applicant to appear before the authorities on 30th January, 2025. The Applicant appeared along with the co-accused and another business consultant Shri Ajit Mehta. Mr. Pal in his statement recorded that he was responsible for the export clearance work in customs and that he did not take approval from his seniors but filed shipping bills as per the order received from the marketing team. From his other statements, it transpired that Mr. Pal was aware that the Ketamine injection is a psychotropic substance and requires export authorisation to be exported. Mr. Pal was thus arrested after providing him with grounds of arrest, the reasons of arrest and the arrest memo. He was produced before the Special Court and remanded to judicial custody from time to time. His Bail Application stands rejected by the Sessions Court and withdrawn from the High Court. His second Bail Application is pending before this Court. Other co-accused were also arrested.

v) Insofar as the present Applicant is concerned, during the recording of his statement, he complained of chest pain and was taken to Lilavati Hospital on his oral request. He was admitted and discharged on being declared fit. He was again hospitalized at Smt. S.R. Mehta and Sir K.P. Cardiac Institute, Sion. He was again discharged on 2nd February, 2025, and referred to general physician. He was also examined by doctors of Sir J.J. Group of Hospitals and was discharged as all tests were found in normal parameters. The recording of his statement continued. Thereafter, the Applicant as a director, was found to be responsible for the attempt to export Ketamine injection without having export authorisation. He was provided the grounds of arrest and reasons of arrest on 3rd February, 2025. Arrest memo was provided to him and his wife was also informed in that regard. Thus, the Applicant is in custody since 3rd February, 2025.

vi) The Applicant filed a Bail Application No.369 of 2025 before the Special (NDPS) Court, Mumbai, which was rejected by the Court. He filed a second bail application, which was also rejected. He filed a Criminal Bail Application No.1936 of 2025 before this Court, which was withdrawn with permission to file a bail application before the Special Court. Applicant filed Criminal Application No.433 of 2025 under Section 528 of BNSS which was also permitted to be withdrawn by order dated 5th May, 2025 on the ground that Bail Application No.1936 of 2025 was filed before this Court. Another Bail Application No.522 of 2025 was filed by the Applicant before the Special Court. By order dated 29th May, 2025, on a *praecipe* filed by the Applicant before this Court, he was permitted to withdraw Bail Application No.1936 of 2025 with liberty to file a bail application before the Special Court. On 8th July, 2025, the Applicant filed Bail Application No.522 of 2025, before the Special Judge. During the pendency of the same, a Criminal Writ Petition No.3770 of 2025, was filed before this Court seeking issuance of a writ of *habeas corpus* on the ground of illegal detention and non production within 24 hours before the Magistrate. The said Petition was rejected by order dated 7th October, 2025.

vii) On 29th July, 2025, the Respondent filed the complaint under Section 8(c), 23(c), 26, 28, 29 and 54 of the NDPS Act r/w Rule 53, 58 and 66 of the NDPS Rules 1985. Another Bail Application No. 2834 of 2025, filed by the Applicant was permitted to be withdrawn by order dated 7th August, 2025, with liberty to file a bail application before the Special Court. The Bail Application filed in Special Case No. 1543 of 2025 was rejected by the Special Court by its order dated 28th August, 2025. Hence, the Applicant is before this Court for the relief as prayed.

3. Mr. Ponda, learned senior counsel appeared for the Applicant and Mr. Mishra, learned SPP appeared for the Respondent.

4. At the very outset, Mr. Ponda submitted that since the Company namely M/s. Naprod Life Sciences Pvt. Ltd., Mumbai, was not made an accused, the Director i.e., the Applicant cannot be prosecuted. Mr. Ponda placed reliance on the decision of the Supreme Court in the case of ***Aneeta Hada v. Godfather Travels and Tours (Pvt. Ltd)***[1], to canvass his argument that the actual offence should have been committed by the Company and then alone the other categories of person can be held liable for the offence. Drawing strength from the said decision, Mr. Ponda submitted that if the Company is not arraigned as an accused, prosecution cannot be maintained against its director, employee etc. Mr. Ponda also drew my attention to the complaint filed by the Respondent against the Applicant to say that there is no averment in the entire complaint that the Applicant was responsible for the day to day affairs of the Company. He submitted that in absence of such an averment the complaint is not maintainable against the Applicant. He relied on several decisions of the Supreme Court to buttress his above argument including the decision in

1 (2012) 5 SCC 661

the matter of ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla and Ors.***[2],

5. Mr. Ponda then argued that there was no mis-declaration in respect of the consignment. He submitted that the Applicant's arrest is only on the ground of procedural violation and there was no trafficking alleged against him. He also pointed to a violation of Section 42 of the NDPS Act. On facts, Mr. Ponda submitted that there was no attempt to export without an authorisation. Most importantly, he submits that there is no role of the Applicant in commission of the said offence inasmuch as the Applicant had no knowledge regarding the consignment being sent for export. Hence, there is a total absence of *mens rea.* Moreover, he submitted that the Customs House Agent ('CHA') itself failed in its statutory duty to intimate the Applicant or M/s. Naprod regarding the requirement of export authorisation. Furthermore, he submitted that the embargo under Section 37 of the NDPS Act

2 (2005) 8 SCC 89

is totally inapplicable. Lastly, Mr. Ponda stated that in any case, M/s. Naprod has now received an export authorisation on 7th May, 2025 from the CBN and hence the Applicant is unlikely to commit such offence again. On the basis of the aforesaid grounds Mr. Ponda prayed that the Applicant be released on bail.

6. Per contra, Mr. Mishra, learned SPP took me through the Affidavit-in-Reply dated 13th October, 2025, affirmed by one Mr. Mahesh Vhatkar, Assistant Commissioner of Customs, SIIB (Export). Mr. Mishra pointed to the anlysis of forensic data extracted from Mr. Pal's mobile phone from which were recovered screenshots of a WhatsApp conversation between Mr. Pal and one Ms. Geetanjali (NPD). There is conversation also between Mr. Pal and one Mr. Rahul Chavan, that 'Mohan sir approve to process the shipment.... please confirm....' Mr. Mishra submitted that although this conversation was relating to a different consignment and different shipment, it demonstrates that the Applicant as a

Director, played a crucial role in approving shipments. Another WhatsApp conversation was referred to by Mr. Mishra. Mr. Mishra submitted that the NOC / export authorisation is mandatory. Admittedly, the same was not available with M/s. Naprod and an endevour was made to export *dehors* the authorisation. This itself is an offence under the provisions of NDPS Act. The Applicant being a Director of the Company, played an active role in the shipment of consignments from the Company to the exporters. There is material to indicate approvals ordinarily given by the Applicant, while consignments and shipments of other products were exported to the customers of M/s. Naprod. Even the Applicant's own brother in his statement stated that, his elder brother namely the Applicant was overall in-charge of the Company. Mr. Mishra pointed to paragraph 15 of the complaint where the Applicant's role is detailed. Mr. Mishra placed reliance on a judgment of this Court in the matter of ***Gudipati Subramanian v. Union of India***[3] to contend that the

3 2024 (389) E.L.T. 317 (Bom)

statements recorded under Section 67 of the Act cannot be used against the Accused. Mr. Mishra thus, prayed that the Application be rejected.

7. Before adverting to the rivals submissions canvassed on either side, it would be apposite to look into the provisions of Section 38 of the NDPS Act dealing with offences by companies. Section 38 of the NDPS Act reads thus:-

> ***38. Offences by companies.****-(1) Where an offence under Chapter IV has Do been committed by a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter IV has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed*

to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

8. The first part of the provision places the liability on every person, who was in-charge of and responsible for the conduct of business by the Company at the time the offence was alleged to be committed by the Company. However, the proviso to Sub-section (1) provides immunity to such person liable to punishment, if it is demonstrated that the particular offence is committed without his knowledge or that he exercised diligence to prevent commission of the alleged offence.

9. In order to ascertain as to whether the Applicant was demonstrably in knowledge of the acts of the co-accused including Mr. Pal, the manager who personally carted the consignment for export. The chronology of events is important to establish the culpability of the Applicant. At the time of preparing and carting the consignment for export, the Applicant was admittedly in Dubai. Admittedly, M/s. Naprod has a valid and subsisting license issued by the Competent Authority to manufacture Ketamine, although M/s. Naprod did not have export authorisation at that time.

10. The sum and substratum of the material placed on record by the Respondent to indicate knowledge of the Applicant is essentially WhatsApp messages between the co-accused *inter se* and another person and statements of several witnesses including co-accused and the Applicant himself to the effect that the Applicant was in-charge of the conduct of the business at the time when the offence was committed. I have perused the WhatsApp chats. The same relate to a conversation between Mr. Pal and another person pertaining to another authorised consignment, where the Applicant's approval is being discussed. The other WhatsApp chat also relates to a negotiation by the Applicant with a buyer of another product of M/s. Naprod. The same also relates to export of some tablets and the price negotiations in that regard. The Ketamine seized is admittedly not in a tablet form but in injections. Hence, it is clear that the conversations and the WhatsApp messages on record and relied upon by the Respondent do not establish the Applicant's involvement nor his knowledge regarding the subject export consignment.

11. A plain reading of the complaint itself has a paragraph titled 'Role of the Mohan Babulal Jain'. In the entire paragraph, there is no averment that the offence was committed with the knowledge of the Applicant. Even a generic statement is absent that the Applicant is responsible for the day to day affairs of M/s. Naprod. Save and except for the said paragraph, the entire complaint is bereft of the active role of the Applicant, as being responsible for the said consignment of Ketamine injections. The only basis of arriving at the conclusion that the Applicant failed to implement adequate compliance measures, exercised lack of oversight and failed to prevent the unauthorised attempt to export the consignment is that the Applicant was an acting Director of the Company and aware that the goods i.e. Ketamine injections is a restricted substance under the NDPS Act, for which authorisation is required. There is no averment in the entire complaint that attributes an active role of the Applicant in the attempt to export the Ketamine.

12. I have perused the statements of the Applicant himself and other witnesses which are placed on record. The Applicant in fact has admitted that M/s. Naprod has a hierarchy structure for day to day work and the senior management team reports to him. However, he has specifically denied his alleged generalized responsibility of due diligence being linked to the unintentional, non-beneficial, non advantageous errors and omissions on the part of his hierarchical team members. I have also gone through the statement of Shri Brijesh Radheshyam Pandey, the designated partner, CB - M/s. Macro Customs Consultant LLP.

There is nothing in his statement to indicate the active involvement of the Applicant in the alleged offence. In fact, he has named one Mr. Ketan Kore, who handled the shipment at export and who knew that the goods under the consignment are restricted under the NDPS Act. I have also perused the statement of Mr. Ajit Mehta a past employee of M/s. Naprod. He has specifically stated that the purchase order was received by the sales operation team and ordinarily the team takes it forward with the approval of the Director. He has further stated that one Mr. Rahul Chavan is the overall Export Head of M/s. Naprod. Further the statement of Mr. Manish Jain, another director indicates that the Applicant although a working director and overall in-charge of the Company is only involved in framing policies of the Company and in the matter of its business activities etc., the actual day to day business is looked after by the employees in their respective departments in their Company. I have also perused statements of other witnesses. On examination of the statements of witnesses taken at face value, for the limited purpose of bail, *prima facie* indicate that the Applicant had no knowledge about the specific consignment being carted for export, *sans* export authorisation. There is no material on record, which reveals that the present Applicant was aware of the export consignment containing Ketamine injections.

13. It is admitted that as on date the export authorisation for the export of Ketamine injections is issued by the Competent Authority to M/s. Naprod. *Prima facie* the material on record indicates alleged commission of the offence without the knowledge of the Applicant. The Applicant, as a Director of the Company, though may be in charge of the day to day affairs of the company, the prosecution has failed to bring home the knowledge of the subject consignment to the Applicant. Consequently, the question of the Applicant exercising due diligence to prevent commission of the offence does not arise.

14. In view of the aforesaid discussions, the rigors of twin conditions of Section 37 of the NDPS Act are satisfied. I have no hesitation in holding that there are reasonable grounds for believing that the Applicant is not guilty of the offence. Admittedly, there are no antecedents in respect of the present Applicant. Moreover, M/s. Naprod has already received the export authorisation to export Ketamine injections. In this view of the matter, the Applicant is not likely to commit any offence under the NDPS Act while on bail.

15. Considering the aforesaid, I am inclined to enlarge the Applicant on bail and it is ordered as under:-

ORDER

i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.1,00,000/- with one or two local sureties in the like amount;

ii) The Applicant is permitted to furnish provisional cash bail of Rs.1,00,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.1,00,000/- within a period of four weeks after his release, which shall be accepted by the Trial Court. The Applicant shall provide the sureties as directed;

iii) The Applicant shall attend the Police Station concerned, on first Monday of every month between 10:00 a.m. and 12:00 p.m., till the charges are framed by the Trial Court. He shall also attend the Trial Court concerned on each and every date as directed, till the conclusion of the trial, save and except if the Applicant is exempted from appearance by orders of the Trial Court;

iv) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station;

v) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vi) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and / or change of residence or mo *sans* bile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vii) The Applicant to co-operate with the conduct of the trial;

viii) Any infraction of the aforesaid conditions shall entail cancellation of bail;

16. Application is allowed in the above terms and is accordingly disposed of.

17. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(DR. NEELA GOKHALE, J)