IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.1754 of 2025

Kamal Dube
Age: 50 yrs, Occ: farmer,
R/o Chhauradano, Jolahgawane
East Champaran Bihar-845302 … Applicant.
Vs.
The State of Maharashtra
(Through Anti-Narcotic Cell,
Azad Maidan Unit, Mumbai) … Respondent.

Mr Vikas Mourya i/by RR Sawant for the applicant.
Mr Arfan Sait, APP for the respondent / State.
PSI Sagar Ghadge ANC Azad Maidan police station.

Coram : R.N.Laddha, J.
Date : 30 June 2025.

P.C. :

By this application, the applicant seeks pre-arrest bail in connection with CR No.41 of 2024, registered by the Anti-Narcotic Cell, Azad Maidan Unit, Mumbai, for offences punishable under Sections 8(c) and 20(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. According to the prosecution, on 25 July 2024, acting on specific intelligence, officers associated with the respondent agency apprehended the co-accused, Surajkumar Lalji Sha. At that time, he was found in possession of 7.954 kg of charas, a quantity that falls within the category of 'commercial' under the relevant provisions of the NDPS Act. Subsequent investigation into the matter revealed that the applicant was the individual responsible for supplying seized contraband to the co-accused.

3. Mr Vikas Mourya, the learned Counsel representing the applicant, asserts the applicant's innocence and argues that the accusations levelled against the applicant are baseless and stem exclusively from the statements made by the co-accused. He submits that no contraband substance has been recovered from the applicant's possession, and there is no link or evidentiary nexus connecting the applicant to the alleged recovery of contraband material. He submits that the applicant was not present in Mumbai at the material time when the alleged incident took place, and that he shares no acquaintance or association with the co-accused from whom the alleged contraband was purportedly seized.

4. The learned Counsel, while emphasising the applicant's clean antecedents and cooperative conduct, submits that the applicant is willing to abide by any conditions that this Court may impose.

5. On the other hand, Mr Arfan Sait, the learned Additional Public Prosecutor representing the respondent/State, contends that the applicant handed over the contraband to the co-accused from whom it was recovered at Kalyan Railway Station. The applicant directed the co-accused to hand over the contraband to someone at the spot. The applicant's Call Detail Records (CDRs) demonstrate a consistent pattern of communication between the applicant and the co-accused. The SIM Card used for this communication stands in the applicant's name. The learned APP further contends that prior to the registration of the FIR, the co-accused implicated the applicant, and the seizure panchanama was prepared. Therefore, according to him, there is no bar to considering the co-accused's statement. Furthermore, Mr Sait submits that the applicant is a flight risk and highlights that his family members informed the investigating agency that the applicant is in Nepal. In support of his contentions, the learned APP relies

on *Muraleedharan v. State of Kerala, (2001) 4 SCC 638.*

6. This Court has considered the rival submissions canvassed across the Bar and perused the records.

7. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straitjacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Srikant Upadhyay & Ors. v. State of Bihar & Anr., 2024 SCC OnLine SC 282.*

8. Upon perusing the records, it appears that, acting on confidential information, law enforcement authorities

conducted a raid which resulted in the seizure of a commercial quantity of contraband, specifically, 7.954 kgs of charas from the co-accused. During the on-spot investigation, the co-accused, in the presence of two independent witnesses, revealed the name of the present applicant as the individual responsible for supplying the said contraband. The material on record further indicates that the applicant was using a mobile SIM Card registered in his name to remain in regular contact with the co-accused. The Call Detail Records ('CDRs') of the applicant corroborate the prosecution's assertion that he had met with the co-accused at the relevant time. Notably, the location data of the applicant's mobile phone contradicts his claim that he was not present in Mumbai at the relevant time, weakening his *alibi. Prima facie,* there is sufficient material on record suggesting the applicant's involvement in the present crime. The ongoing investigation aims to uncover a large-scale network involved in the illicit sale of contraband. The supplying, distribution, and sale of contraband items are serious crimes against society and must be addressed with utmost severity.

9. In *Muraleedharan (supra),* the Hon'ble Supreme Court

cautioned against granting pre-arrest bail for offences under the NDPS Act, emphasising the necessity of the accused's custodial interrogation. The relevant portion reads as follows:

> *"7. The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said section (vide Union of India v. Ram Samujh [(1999) 9 SCC 429 : 1999 SCC (Cri) 1522]). If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such an accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the*

Sessions Judge decided to think that "no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused". Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained a bugbear of how the discretion conferred on Sessions Judges under Section 438 CrPC would have been misused. It is heartening that the High Court of Kerala did not allow such an order to remain in force for long. By the impugned order passed by the learned Single Judge of the High Court an unwholesome benefit wangled by the *appellant was rightly reversed"*

10. Considering the seriousness of the offence and the far-reaching consequences on society, the applicant's custody is necessary to unearth the supply chain and secure vital links. The seriousness of the crime necessitates a cautious and thorough investigation approach, as the consequences extend far beyond the actions of a single individual, affecting the health, safety, and well-being of the community at large. Given these compelling circumstances and the potential risk that the applicant's release may hamper the progress of the ongoing investigation, this Court finds no justifiable grounds to exercise its discretionary powers in favour of granting relief to the applicant. As a result, the application stands rejected.

[R. N. Laddha, J.]