

MHRG170012372023



ORDER BELOW EXH.03
IN SPECIAL N.D.P.S. CASE NO.128/2023
TALOJA C.R.NO.144/2023
THE STATE OF MAHARASHTRA -V/S- BONIFACE EMENIKE
(PASSED ON 17th DAY OF AUGUST, 2024)

This application is on behalf of the applicant/accused – Boniface Emenike vide Section 439 of the Code of Criminal Procedure to enlarge him on bail.

2. This application is strongly opposed on behalf of prosecution vide Exh.05.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether the application is maintainable?	No.
II.	Whether grounds are justified to release the applicant/accused on bail vide Section 439 of the Code	No.

	of Criminal Procedure ?	
III.	What Order ?	The application is Dismissed.

REASONS

4. Perused application, say filed. Heard learned advocate for applicant/accused as well as learned A.P.P Shri.C.Y.Patil.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The present prosecution is based on raid effected upon receiving secret information to Anti-Narcotic Cell, Crime Branch, Navi Mumbai. The raid is effected on 28.04.2023, at about 21.05 hours, at Krupa Residency, Plot no.49, Room No.101, Sector 2, Taloja, Navi Mumbai. The applicant /accused was found in the possession of the contraband Methaqualone weighing 116 gm worth Rs.11,60,000/- for sale. The contraband is seized by the police in pursuance of the panchnama. He is staying in India without any valid passport and visa. Pursuant to the charge-sheet, the result of analysis of the examination report of the contraband is forwarded by Regional Forensic

Science Laboratory to this court and the contraband is detected as Methamphetamine.

6. Taloja Police station registered the Crime No.144/2023 Dated 29.04.2023 for the offence under Section 8(c) and 22(b) of the Narcotics Drugs and Psychotropic Substances Act, Section 3(a), 6(a) of the Passport Act and Section 14(a)(b)(c) of the Foreigners Act against the applicant/accused.

7. The accused/applicant was arrested on 29.04.2023 and produced before the Court on the same day. Initially the accused was remanded to police custody till 04.05.2023. Thereafter he was remanded to judicial custody as per order dated 04.05.2023. Presently, the applicant/accused is in Judicial Custody.

MAINTAINABILITY OF APPLICATION :

8. The applicant/accused filed application vide Criminal Bail Application No.566/2023 and it was dismissed by District Judge-3 and Additional Sessions Judge, Panvel-Raigad as per order dated 28.07.2023. The charge-sheet is filed on 27.06.2023.

9. Since this is a successive application for bail after filing of charge-sheet as such, the query is put to the learned advocate of applicant as to the maintainability of the application inviting attention towards the law relating to successive bail application as set at rest in view of observation of Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar V/s. Rajesh Ranjan @ Pappu Yadav AIR 2005 SUPREME COURT 921** that, 'even though there is a room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier can move a subsequent application.'

10. Learned advocate of applicant in pursuance of this query relied upon the observation of Hon'ble Apex Court in the case of **Virupakshappa Gouda And Another LAWS (SC)-2017-3-104.**

11. However on perusal of this observation in fact it is not applicable to the case of applicant in the light of observation in Para No.20 – 'In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to

the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety call for axing of the order.'

12. In fact this observation goes against the case of applicant. As observed above, the subsequent application after filing charge-sheet is not maintainable. Pursuant to the rejection of earlier application dated 28.07.2023, there is no change in circumstance to entertain this application. Hence, this successive application is not maintainable. I answer Point No.I in the negative.

BAR OF SECTION 37 OF NDPS ACT :

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

13. Earlier the contraband was Methaqualone and pursuant to the report of chemical analysis, it was detected as Methamphetamine. It was weighing 116 gms. In the light of table appended to the NDPS Act, the contraband at serial No.160, Methamphetamine provides small quantity as - 2gm and commercial quantity as 50 gms. Hence the seized quantity is commercial quantity as such, bar vide Section 37 of NDPS Act has application.

14. Learned advocate of applicant argued that the mandatory compliance are not followed, also there is non-compliance of Section 50 of NDPS Act as such, the accused shall be released on bail.

15. Per contra, learned A.P.P relied on the observation of Hon'ble Apex Court in the case of Union of India through Narcotics Control Bureau, Lucknow -v/s- Md.Nawaz Khan in Criminal Appeal No.1043/2021 dated 22.09.2021 wherein it is observed in Para No.29 - '*In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March, 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial.*'

16. In the light of this rival contention apparently it has bar vide Section 37 of NDPS Act. The question as to non-compliance of provision can be raised during course of trial and not at this stage. The applicant was found in possession of commercial quantity of contraband. The applicant is a foreign national and has breached the visa and passport rules. He is

illegally staying in India. Looking to the nature of offence and the application for bail is not maintainable, therefore the applicant does not deserve for bail. With this, I pass following order ;

ORDER

1.	The application for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant/accused – Boniface Emenike is dismissed.
2.	A soft copy of this bail order be forwarded to applicant/accused through Superintendent, Taloja Jail by e-mail for information in view of observation of Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) NO.4/2021, Dated 31.01.2023.
3.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 17.08.2024

(K.G. Paldewar)
Additional Sessions Judge,
Panvel

Arguments heard on	03 rd Day of August, 2024.
Judgment/order delivered on	17 th Day of August, 2024
Dictated on	17 th Day of August, 2024
Transcribed on	17 th Day of August, 2024
Checked and signed on	17 th Day of August, 2024

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre
 Name of the Court : Additional Sessions Court,
 Panvel
 Date of Judgment/Order : 17.08.2024.
 Judgment/Order signed on : 17.08.2024.
 Presiding Officer : K.G. Paldewar
 Judgment/Order uploaded on : 17.08.2024.