

ORDER BELOW EXH.5 IN NDPS SPL. CASE No.14/2021.
CNR NO.170001752021

1. Regular bail application is filed by accused No.1 Meenanath Bodake U/sec.439 of Cr.P.C in F.No.DRI/MZU/C/INT-45/2020 for the offence punishable U/sec.8(c) r.w.34(c) and 29 of the NDPS Act.

2. Perused application and say Exh.7. Heard Adv. Awasarmol for accused No.1 and Spl. APP Sarpande for DRI. So also gone through the the documents filed on record by both the sides. Adv. Awasarmol submitted that, accused No.1 came to be arrested on 09/08/2020 for the offence punishable U/sec.8(c) r.w. Sec.23(c) and sec.29 of the NDPS Act in view of the seizure of heroin by Intelligence Officer of the DRI. It is alleged by the prosecution that on examination of container at Nhava-Sheva port, creamish coloured powder was found to be concealed inside hollow plastic pipes. On examination of it it was found that, the said creamish coloured powder was heroin, weighing 191.60 kg. Accused No.1 was called by DRI and his statement was recorded U/sec.67 of NDPS Act and as the consignment was imported by M/s. Sarvim Exports, Delhi and Accused No.1 acted as Custom House Agent (CHA) was arrested.

3. Adv. Awasarmol further submitted that, Accused No.1 is innocent and nothing to do as alleged recovery of heroin and he had no any knowledge about the container and what was stuffed in it. Nothing is recovered from the Accused No.1 and the only role

played by the Accused No.1 was passing of the consignment being custom broker after KYC verification. The documents submitted by KYC verification were as per the norms of circular issued by custom department. Accused No.1 verified the light bill, water bill, GST registration certificate and Adhar Card of accused No.3 of Sarvim Exports. The documents were submitted by accused No.3 which Accused No.1 submitted to the custom for clearance. Accused No.1 acted in good faith and there is no any meansria. All the amount received through accused No.3 on which GST was paid. The sai amount included custom duty.

4. Adv. Awasarmol further submitted that, being CHA Accused No.1 was in contact with accused No.4. There was no any criminal conspiracy as accused No.1 did not knew accused No.3 or 4. Accused No.1 is having no any criminal antecedents. He is permanent resident of Panvel having wife an 2 kids. Investigation is already completed and charge-sheet is filed. Therefore, there is no need to keep the Accused No.1 behind bar when he is ready to furnish bail. Accused No.1 is ready to abide any terms and conditions imposed by this Court.

5. Whereas, APP Sarpande vehemently submitted that, on the ground that accused No.1 is a member of syndicate which includes international drug peddlers and he knew that the imported material was drug and knowing the said fact facilitated its transportation. Accused No.1 over charged the amount and was in constant touch with accused No.3 and 4. Investigation

revealed that, Rs.6,59,000/- was deposited in the account of accused No.1 and the payment was made by Alareeb Enterprises which is in the name of wife of accused No.4. The amount was deposited from 05/12/2019 till 07/08/2020, therefore, there was complicity of accused No.1 with other accused. If not then why would wife of accused No.4 would have deposited the amount when there was no any consignment sent. The role of Accused No.1 is no more the CHA and was part of syndicate. Accused No.1 received huge amount though he cleared few consignment. The container was of accused No.3, but transaction was done by accused No.4. It is a big international drug racket. Accused No.1 was in constant touch with accused No.4 since 2019.

6. Adv. Sarpande further submitted that, the container which was imported was inspected in view of specific intelligence input received wherein huge quantity of heroin was seized. Offence is serious in nature and considering the bar of sec.37 accused No.1 cannot be released on bail and if released will abscond. Accordingly, rejection of application is prayed.

7. Perusal of the complaint reveals that, in view of the specific input received by DRI, Mumbai Zonal Unit about container No.INKU2267955 imported by M/s. Sarvim Exports, wherein the imported good were declared "Raw Liquorice Roots Glycyrrhiza Glabra Not For Human Consumption Co No.-04782" was inspected wherein creamish coloured powder with pungent smell concealed inside hollow plastic pipes which were given wooden texture was

found. With the help of field test kit the creamish colour powder was tested which tested positive for heroin. The panchnama was prepared in presence of accused No.1. In all 1783 wooden structure were cut open and the plastic pipe contained 191.60 kg heroin.

8. It further reveals from the complaint that, statement of accused No.1 was recorded under Sec. 67 of the NDPS Act wherein accused No.1 stated that, he charged Rs.15,000/- for 25 fts container and Rs.25,000/- for 40 fts. container as clearance charges in respect of M/s. Sarvim Exports, wherein he used to charge Rs.5000/- to Rs.7000/- for 20 ft container and Rs.12,000/- for 40 ft. container for others. Accused No.1 accepted that he did not discharged his obligation under Customs Brokers Licensing Regulation (CBLR) 2018 in regard of KYC verification. Further perusal of the complaint reveals that, during the course of investigation, many names cropped up and after finding their participation in crime they were arrested. In all 5 persons were arrested. As per Spl. APP Sarpande the call details of accused No.1 and accused No.4 showed there were 18 calls and they were in constant touch with each other. Even accused No.4 transferred Rs.6,59,000/- from 05/12/2019 to 07/08/2020, But, the amount was not received from the account of M/s. Sarvim Exports which had booked the consignment and was registered IEC holder.

9. In fact the amount which was transferred from Alareeb Enterprises which is in the name of wife of accused No.4 which had

no concern with the import of the container. Thus prima facie investigation reveals that, other than the CHA, accused No.1 had relationship with accused No.4. As M/s Sarvim imported the container, therefore, it was Sarvesh Bhatia (accused No.3) should have made the payment and accused No.4 had no any concern to make payment.

10. Thus complaint and the documents shows involvement of accused No.1, because he received huge amount from accused No.4 that to from the account of wife of accused No.4. There was no need for accused No.4 to transfer amount in the account of accused No.1 as it was Sarvesh Bhatia (accused No.3) who was registered IEC holder of M/s Sarvim Export and amount ought to have been transferred form his account to the account of accused No.1. Therefore, involvement of accused No.1 in the import of heroin is made out. Documents at this juncture shows that accused No.1 is part of the conspiracy and knew about the contraband in the container as he was in constant touch with accused No.4 on cellphone.

11. Therefore considering the role of accused No.1, recovery of huge quantity of heroin and bar of Sec.37 of NDPS Act I a of the view that, Accused No.1 is not entitle to be released on bail. As regards the reliance on the authorities placed by accused No.1. As far as reliance placed on the authority of *Tofan Singh v/s State Of Tamil Nadu, AIR 2020 SC 5592* wherein the issue before the Hon'ble Apex Court was whether conviction can be based on

the confessional statement made by the accused under Sec.67 of the NDPS Act and whether such statement recorded by an officer who is to be treated as "Police Officer" and thus hit by Sec.25 of the Evidence Act. The Hon'ble Apex Court held that, confessional statement recorded under Sec.67 cannot be used as confessional statement in trial of offence under NDPS Act.

12. But in the present case in hand, the trial has not started, therefore, no any benefit of the judgment of *Tofan Singh (supra)* can be taken at the time of seeking bail. Whereas, in the case of *Union Of India v/s Shiv Shankar Kesari, (2007) 7 SCC, 798* while deciding the scope of Sec.37 had held that, while considering the application for bail with reference to Sec.37 should not record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding.

13. As discussed above, the investigation prima facie reveals the involvement of accused No.1 in the crime. He had called accused No.4 from his cellphone number of times, which shows his involvement. There is reasonable ground showing involvement of accused. Hence, in view of bar of Sec.37 accused No.2 cannot be released on bail. Thus, I don't find any merit in the

application. Accordingly, I proceed to pass following order:

ORDER

Application Exh.5 stands rejected.

Panvel,
Dated :- 27/04/2021

(N.B.Lavte)
Ad hoc Addl. Sessions Judge-1,
Panvel-Raigad