

MHRG170001752021



IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL
SESSIONS JUDGE, PANVEL RAIGAD
ORDER BELOW EXHIBIT 37
IN SPECIAL CASE (NDPS) NO.14/2021
(Dated 13/06/2023)

1] Application is for bail by applicant/accused No.5 **Mahindrakumar Ishwarnath Nigam** as per section 37 of the NDPS Act.

2] The applicant/accused submits that, he was arrested on 09/08/2020 and since 20/08/2020 he is in judicial custody.

3] According to prosecution DRI received information that, in container number INKU2267955 imported bill of entry no.8349682 date 01/08/2020 a creamish colour powder is found concealed in hollow plastic pipe. On this information Joint Director of DRI Sameer Wankhede put up the intelligence note and got approval from higher authority. A team was deputed for examination, which carried the testing kit. The said powder was tested and it revealed as Herion of 191.60 kgs. Further according to prosecution on 08/08/2020 house of the accused No.5 was searched and documents and devices were searched. Statement of applicant/accused No.5 was recorded. According to prosecution said statement alleges that, applicant/accused No.5 was known to accused No.4 and also identified one Gulam Habib

Afgani National. It is alleged that, applicant/accused was aware that, narcotic substance Heroin being imported.

4] Applicant submits that he is innocent, he is behind bar for last 972 days. Nothing was recovered from him. He has no knowledge of alleged illegal activity. He had rented his godawn premises in good faith, only to store mulethi, licuorice-harbal plant. It is further submitted that, nothing wrong or illegal act was committed by present applicant, in renting on a godawn on oral agreement. It is submitted that statements recorded u/sec. 67 of NDPS Act are inadmissible. It is submitted that accused No.4 was tenant of present applicant, hence, the alleged telephonic conversations are deemed to happen between owner and tenant. It is submitted that applicant is years old suffering from medical ailments. Applicant will not abscond. There are reasonable grounds to believe that applicant is not guilty of alleged offence.

5] Intelligence Officer, DRI has filed say at Exh.40. It is submitted that applicant/accused No.5 was in constant touch with accused No.4 for the period 01/12/2019 to 10/08/2020. according to prosecution there were 321 calls in between accused No.5 and 4. It is submitted that, applicant/accused alongwith accused No.4, was facilitating storage of narcotic consignment for quick money. It is submitted that if bail is granted, applicant/accused No.5 will commit similar offence.

6] Heard Ld.Adv.Shri Shubham Upadhyay for the applicant/accused No.5 and ld.Adv.P.V.Mhatre for DRI.

7] At the outset it be noted that, applicant/accused No.5 alongwith others is alleged to have committed offence p/u/sec. 25, r.w. section 8 (C) of NDPS Act 1985. The narcotic substance Heroin seized from the container imported, admittedly is of 191 kgms which is commercial quantity. The allegations against the present applicant/accused are providing storage godawn, to facilitate transportation of the narcotic drug. Section 37 (1) (b), of the Act mandates that, for offences involving commercial quantity of contraband, the accused shall not be released on bail unless prosecution is given opportunity and when the prosecution opposes the application, there has to be satisfaction of the court is that there are reasonable grounds to believe that accused is not guilty and he will not commence any offence, while on bail.

8] Thus twin conditions are to be satisfied. First is there should be reasonable grounds to believe that accused is innocent and the second is he will not commit offence, if enlarge on bail.

9] Admittedly the present case godawn of applicant/accused No.5 was let to the accused No.4. Evidence of the Intelligence agency is that, there were 321 calls from 01/12/2019 to 10/08/2020. The information was received on 07/08/2020 and on the same day the container was examined.

Hence, prima facie the calls between accused No.5 and 4 are of the relevant period.

10] Ld.Adv. For the accused No.5 relied on following decisions :-

- 1) *State By (Ncb) Bengaluru Vs. Pallulabid Ahmad Arimutta, Supreme Court of India, deecided on 10/01/2022*
- 2) *Udayraj Vs. State of High Court of Allahabad decided on 13/05/2022*
- 3) *Sheetal Vs State Government of NCT of Delhi high Court of Delhi decided on 03/03/2021*
- 4) *Buta Singh Vs State of Punjab High Court of Punjab and Haryana decided on 30/01/2020*
- 5) *Bobby Sharma Vs. State of Himachal Pradesh High Court of Himachal Pradesh decided on 05/04/2023*
- 6) *Mohd.Muslim @ Hussain Vs.State (NCT of Delhi) Supreme Court India decided on 28/03/2023*
- 7) *Fasil Vs.State of Kerala High Court of Kerala decided on 13/04/2023*
- 8) *MD Raja Vs State of West Bengal Aironline 2022 SC 1074*
- 9) *Bikram Singh Majithia Vs. Dtate of Punjab High Court of Punjab and Haryana decided on 10/08/2022*

11] I have gone through these decisions. With regard to the offence of commercial quantity of contraband, Hon'ble Apex Court has laid down law with regard to section 37 of the Act. A confessional statement recorded under section 67 of The Act, is not the only material to be considered at the time of deciding the

bail application. Apart from this statement the other material to be kept in mind. This law is laid down by the Hon'ble Apex Court in the case of NCB Vs Mohit Agarwal CRIMINAL APPEAL NOS. 1001-1002 OF 2022.

12] Further in the case of Union of India Vs. Md.Nawaj Khan, 2021 ALL SCR (Cri) 1706, Hon'ble Apex Court has laid down that, the plea of non-compliance of provisions of section 42 of the Act is a fact which is to be ascertained at the time of trial. At the time of considering the bail application non compliance of mandatory provisions of The Act, is not a ground to seek bail.

13] In the present case, admitted fact is that godawn of applicant/accused No.5 was let to accused No.4. The material in the charge-sheet indicates that, both these accused were previously jail inmates. There is call detailed record of 321 calls. If these aspects are considered, then I find no reasonable grounds to believe that, applicant/accused No.,5 is not guilty of the offense.

14] Application Exh.37 stands rejected.

Panvel
Date :-13/06/2023.

(Jairaj D.Wadne)
Additional Sessions Judge,
Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the stenographer : S.J.Sheth
Name of the Court : Additional Sessions Judge,
Panvel Raigad
Date of dictation : 13/06/2023
Order signed by the PO.on : 26/06/2023
Order uploaded on : 26/06/2023