

MHRG170001752021



IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL
SESSIONS JUDGE, PANVEL RAIGAD
ORDER BELOW EXHIBIT 50 IN SPECIAL CASE (NDPS) NO.14/2021
(Dated 14/02/2025)

Application is for bail by applicant/accused No.1 Meenanath Bodake in F.No.DRI/MZU/C/INT-45/2020.

2] 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 intelligence note and got approval from higher authority. A team was deputed for examination, which carried testing kit. The said powder was tested and it revealed as Heroin of 191.60 kgs. Further according to prosecution on 08/08/2020 house of accused No.5 was searched and documents and devices were searched. Statement of accused No.5 was recorded. According to prosecution said statement alleges that, 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 was being imported.

3] Accused No.1 submits that, he was arrested on 09/08/2020 alongwith accused No.2 Kondiba Gunjal. He was remanded in judicial custody from 11/08/2020. Accused No.1 submits that, he is partner in custom broker firm viz. M/s. M. B. Shipping and Logistics Solution. Accused No.2 is cousin of accused No.1. Accused No.1 accepted job of clearance of import consignment of M/s.Shivam Exports Proprietor accused No.3 Sarvesh Bhatiya. Further accused No.1 submit that, he is in custody for four years and two months. His last bail application was rejected prior to two and half years. According to him Hon'ble Apex Court and Hon'ble Parent High Court have consistently held that, Article 21 of Constitution of India overwrites section 37 of NDPS Act. Accused No.1 relies on various decisions of Hon'ble Apex Court and Hon'ble High Court.

4] Intelligence Officer, DRI has filed say at Exh.51. It is submitted that, 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. Further statement of accused No.1, accused No.2, 3, 4 and 5 are reproduced in say. It is submitted that accused No.1 play crucial role in present case in which commercial quantity of Heroin 191.6 Kgs was imported from Afganistan. If bail is granted, accused will tamper with evidence and may abscond. It is

submitted that, accused is member of international drug syndicate.

5] Heard Ld.Advocate Anil G. Lala for the accused No.1. Heard Spl.Prosecutor Vijayendra Mishra for DRI.

6] At the outset it be noted that, initially I had rejected bail application of present applicant. Thereafter co-accused No.2 Kondiba Gunjal applied for bail before Hon'ble High Court by Bail Application No.3530/2022. Hon'ble Parent High Court on 28/11/2024 granted bail to accused No.2. Thereafter co-accused Mahindra Nigam applied for bail before Hon'ble High Court by application No.2150/2023 and Hon'ble Parent High Court granted bail on 07/02/2025.

7] Ld.Advocate for accused No.1 submits principle of parity for accused No.1, as according to him role of accused No.1 is at a lower side than accused who are enlarged on bail. Ld.Advocate also invited my attention to a fact that, accused No.1 is behind bar for 4.5 years.

8] I have gone through bail order of Hon'ble Parent High Court in Bail Application No.3530/2022. Hon'ble Parent High Court has considered following decisions.

1. *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another Criminal Appeal No.2787/2024*
2. *Ankur Chaudhary Vs. State of Madhya Pradesh Special Leave to Appeal (Cri) No.4648/2024*
3. *Dheeraj Kumar Shukila Vs. State of Uttar Pradesh Special Leave to Appeal (Cri) No.6990/2022*
4. *Mahmood Kurdeya Vs Narcotic Control Burreau Criminal Appeal No.1570/2021.*
5. *Mohd.Muslim @ Hussain Vs. State of (NCTof Delhi) SCC 2023 Online Supreme Court 352.*
6. *Surjit Singh @ Kala Vs. State of Punjab CRM No.32558/2023.*
7. *Vijay Mohan Pawara Vs. State of Maharashtra Bail Application No.433/2024 High Court of Bombay*
8. *Gudipati Subramaniam Vs. Union of India High Court Bombay 2024 SCC Online Bom 1350.*
9. *Shashikant Prabhu Vs. Harshad Chandrakant Gawade @ Harry Bail Application No.422/2024 High Court Bombay.*

9] Further Hon'ble Parent High Court relied on decision of Hon'ble Apex Court in case of *Satendra Kumar Antel Vs. CBI* wherein Hon'ble Apex Court has laid down that, a long incarceration and inordinate delay in conclusion of trial would affect right of accused of speedy trial and section 37 of NDPS Act or such provisions under special statute would not be an impediment to grant bail.

10] In light of above law laid down, if application of accused No.1 is considered then admittedly he is a custom clearing agent, he was present when consignment was intercepted and examined. Co-accused No.2 and 5 are enlarged on bail by Hon'ble High Court. Hon'ble Parent High Court with regard to co-accused No.2 and 5 has observed that, long incarceration affects right of speedy trial of accused. It is also observed that, pre-trial custody would amount to punishment as accused is yet to be held guilty.

11] Ld.Spl.Prosecutor for DRI in his submission pointed out statement recorded u/sec.67 of NDPS Act 1985. He submits that, in these statements involvement of accused persons, aspect of conspiracy, serious nature of offence all is reflected.

12] Hon'ble Apex Court in case of Toofan Singh Vs. State of Tamilnadu, has laid down a clear law that, statement u/sec.67 of NDPS Act cannot be termed as confessional statement. Such statements are barred under section 25 of Evidence Act. Hence, statements recorded by DRI of accused persons cannot be termed as an prima facie evidence to deny bail. As co-accused particularly No.2 is enlarged on bail by Hon'ble Parent High Court, by applying principle of parity, applicant/accused No.1 is entitled to be enlarged on bail with conditions.

ORDER

1. Application Exh.50 is allowed.

2. Applicant/accused No.1 Meenanath Bodake in F.No.DRI/MZU/C/INT-45/2020 be released on P.R. bond of Rs.50,000/- with one or two sureties of like amount.
3. Applicant/accused No.1 shall attend concerned DRI police office, once in a month till further order. i.e. on every third Monday from 11.00 a.m. to 01.00 p.m.
4. Applicant/accused No.1 shall furnish his address proof on record.
5. Applicant/accused No.1 shall not tamper with evidence or attempt to influence or contact complainant witnesses or any person concerned with case.
6. Bail before this Court.
7. Inform concerned DRI authority
8. Copy be sent to Taloja jail by E-mail.

Panvel

Date :-14/02/2024.

(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 : 14/02/2025
Order signed by the P.O.on : 14/02/2025
Order uploaded on : 15/02/2025