

Special (NDPS) Case No.496/2019
1 The State V/s. Addae Anum Oscar @
Ani Ikchukwu Darlinton
Exhibit No. 05

MHRG170125792019



ORDER BELOW EXH. 05
IN SPECIAL (NDPS) CASE NO.496/2019
F.No.NCB/BZU/CR-12/2019
THE STATE OF MAHARASHTRA V/S ADDAE ANUM OSCAR
@ ANI IKCHUKWU DARLINTON
(PASSED ON 06th DAY OF DECEMBER, 2022)

This application is on behalf of the applicant/
accused 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.08.

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

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

II.	What Order ?	The application is Dismissed.
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REASONS

4. Perused application, say filed. Heard learned advocate Shri.Indrajeet Bhosale for the applicant/accused as well as learned Special prosecutor Shri.Irani for Narcotics Control Bureau (N.C.B).

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. A preventive team of officers of NCB, Mumbai Zonal Unit effected operation under Section 50-A of NDPS Act and recovered total 295 gms contraband by name Cocaine concealed in a white carton box from the side wall and total 4 brown coloured packets were procured under panchnama at Sub-post office M.I.D.C., Taloja, Navi Mumbai. The statement of the applicant was recorded on 20.04.2019 and 21.04.2019 under Section 67 of the NDPS Act. The applicant has narrated his role in procurement of this contraband.

6. On that count, Narcotic Control Unit (N.C.B.), Mumbai Zonal Unit, Mumbai registered the Crime No.NCB/BZU/CR-12/2019 for the offence under Section 8(c) read with Section 21(c), 23(c), 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act against the applicant/accused.

7. The N.C.B. arrested the accused/applicant on 21.04.2019 and produced before the Court on 22.04.2019. Initially he was remanded to NCB custody till 24.04.2019. Thereafter, he was remanded to Judicial Custody as per order dated 24.04.2019. Presently, the applicant/accused is in Judicial Custody.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

8. The prosecution case is in respect of recovery of contraband - Cocaine in large quantity of 295 gms from the possession of the applicant. The contraband is forwarded to the address of the applicant through postal service. The consignment was sent through flight from U.K to India then it was at the address of the applicant. At the time of receiving said consignment from post office, the officers of N.C.B. caught hold to the applicant with contraband. As per the revelations made by the applicant, he was arrested and produced initially before magistrate and then before Special court. The

investigation is over and charge-sheet is filed. The prosecution is pending against the applicant. The applicant is behind bar since 22.04.2019 i.e. for a period of three and half year.

9. Learned advocate of the applicant Shri.Indrajeet Bhosale vehemently argued that the officers formed a team in order to carry out controlled delivery. The officers have collected the consignment under reference No.EE5218010 under reference in connection with controlled delivery from the Captain of the flight No.BA00139 British Airways. On 19.04.2019, the Captain of the flight handed over the said consignment to the N.C.B. officers which was wrapped in a transparent polythene and sealed under U.K Border Force One time seal in presence of two witnesses.

10. He further argued that on 20.04.2019, the officers proceeded to Sub-post office Taloja. The parcel was handed over by the officers to the Sub-post master Taloja. The parcel was destined to the applicant as a receiver and was sent by one Kevon Aleong Bagga Trace Chase Uinaqe from Trinidad. The Sub-Post master asked the Foreign National to sign on the delivery slip and received the parcel. Subsequently the officer surrounded the applicant and conducted the operation vide Section 50-A of the NDPS Act. The parcel was opened and it

was allegedly containing contraband.

11. On the backdrop of this factual position, he further argued that there is no valid authorization to the concerned officer since letter bearing No.NCB-DEL-061-2019-NCB-CD has not been annexed with the charge-sheet. The consignment under reference number provided to undertake controlled delivery is different to that of subsequently mentioned. It reflects on the face of record from the charge-sheet. The consignment which was supposed to be received is not received and the said parcel has other reference number.

12. Learned advocate of applicant vociferously argued on the collection of the sample taken from the contraband and mixed it and then later analysis was conducted. The process of sampling is not according to the norms laid down. The process of sample from each of the four parts collected together as such, it was amounted to commercial quantity. On this ground, learned advocate of applicant questioned the sample of contraband collected. Hence, he prayed to release the applicant on bail.

13. Learned advocate of applicant to buttress his submission relied upon the observation of **Hon'ble Bombay High Court in the case of Shashikant Prabhu V/s. N.C.B.,**

Mumbai in Bail Application No.198/2019 Dated 21st December, 2020 wherein the observation of Apex Court in the case of Tofan Singh V/s. State of Tamilnadu in Criminal Appeal No.152/2013 relied upon that '*the officers invested with powers under Section 53 of the NDPS Act are police officers within the meaning of Section 25 of the Evidence Act as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken into account in order to convict an accused under the NDPS Act.*

That the statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.'

14. Per contra, learned advocate for N.C.B vehemently argued that rigors of Section 37 would apply since Section 29 of the NDPS Act is categorically invoked. The present accused had knowledge of the presence and character of the commercial quantity of Cocaine seized by the N.C.B authority. The accused has direct control over the said contraband. The punishment provided for the said offence is minimum 10 years imprisonment which may extend to 20 years.

15. In the light of rival submission, it is apparent that

the seized contraband is the Cocaine. It is 295 gms. Thus it is a commercial quantity. Apparently the bar vide Section 37 of the Act is applicable. The learned advocate of applicant questioned the process of collecting sample as mentioned above in detail, however this ground can be looked into during course of trial and not at this stage. Though the consignment number as mentioned earlier is not matching with the subsequent consignment, however the applicant is intercepted at the place of Sub-post office while receiving the consignment. This applicant before accepting that consignment asked and inquired about the consignment and later he put signature towards delivery of it. Then the officers have conducted further operation of panchnama at the said place.

16. Needless to mention, the applicant made revelations in respect of the consignment addressed to him. The said confessional statement in the light of observation of Hon'ble Apex court (supra) is hit by Section 25 of the Evidence Act during course of trial. At this prima facie stage, his involvement in the offence is made out. Thus the submissions on behalf of learned advocate of applicant does not hold water. The applicant is behind bar for a period of more than three and half year is not a mitigating circumstance to dilute the rigors of Section 37 of the Act. The bar to entertain this application is invoked to the present set of facts. Thus the applicant does not

deserve for bail. I answer Point No.I in the negative. 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 is dismissed.
2.	Inform to Narcotics Control Bureau, Mumbai Zonal Unit/concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 06.12.2022

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

Arguments heard on	27 th Day of September and 06 th Day of October and 09 th Day of November, 2022
Judgment delivered on	06 th Day of December, 2022
Dictated on	06 th Day of December, 2022
Transcribed on	06 th Day of December, 2022
Checked and signed on	06 th Day of December, 2022

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C E R T I F I C A T E

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	:	06.12.2022
Judgment/Order signed on	:	06.12.2022
Presiding Officer	:	K.G. Paldewar
Judgment/Order uploaded on	:	06.12.2022