

# Showik Chakraborty vs Union Of India And Anr on 7 October, 2020

**Equivalent citations: AIRONLINE 2020 BOM 2532**

**Author: Sarang V. Kotwal**

**Bench: Sarang V. Kotwal**

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1.4-BA-st-2387-2020

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION (STAMP) NO. 2387 OF 2020

Showik Chakraborty	]	
Age: 24 years, Student	]	
Residing at : 101, Primrose Apartments,	]	
Near Ajivasan Hall, Next to SNDT College,	]	
Juhu Road, Santacruz (West),	]	
Mumbai - 400 049	]	
(Currently lodged at Taloja Prison)	]	.... Applicant
Versus		
1. The Union of India	]	
(Through Intelligence Officer,	]	
Narcotics Control Bureau, Mumbai.)	]	
2. State of Maharashtra.	]	.... Respondents

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Mr. Satish L. Maneshinde a/w. Anandini Fernandes, Namita Maneshinde & Nikhil Maneshinde, for the Applicant.  
Mr. Anil C. Singh, Additional Solicitor General a/w. Sandesh Patil, Shreeram Shirsat, D.P. Singh, Amogh Singh, Aditya Thakkar, Pavan Patil, Ms. Apurva Gupte, Chintan Shah, Mayur Jaisingh, for Respondent No.1 - NCB  
Mr. R.M. Pethe, APP for Respondent No.2 - State.

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CORAM : SARANG V. KOTWAL, J.

RESERVED ON : 29.09.2020  
PRONOUNCED ON : 07.10.2020

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ORDER:

1. This is an application for bail preferred by the Applicant in connection with C.R. No.16/2020 registered with the Narcotics Control Bureau, Mumbai (hereinafter referred to as "NCB") for the offences punishable under Sections 8(c) read with 20(b)(ii), 22, 27A, 28, 29 and 30 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"). The Applicant was arrested on 4.9.2020.

2. I have heard this application along with Bail Applications (Stamp) No.2184/2020, 2201/2020, 2205/2020 and 2386/2020.

3. I have heard Mr. Satish Maneshinde, learned Counsel for the Applicant and Mr. Anil C. Singh, learned Additional Solicitor General for Respondent No.1.

#### BRIEF FACTS AND CASE OF THE INVESTIGATING AGENCY

4. The allegations against the present Applicant, according to the investigating agency's case are set out in the affidavit-in- reply dated 28.9.2020 filed on behalf of Respondent No.1.

3 1.4-BA-st-2387-2020 Investigating agency's case based on this affidavit-in-reply and other companion affidavits, is as follows.

a) On 28.08.2020, acting on a secret information, a team of NCB apprehended one Abbas Ramzan Ali Lakhani possessing 46 grams of Mariguana/Ganja at Old Kurla Gaon.

Abbas told the team that he had purchased the drug from one Karn Arora, resident of Powai. On this basis, Karn Arora was apprehended and 13 grams of Ganja was recovered from his possession. Both of them were arrested.

b) Based on the disclosures made by Abbas Lakhani and Karn Arora, premises of one Zaid Vilatra was searched. Indian currency of Rs.9,55,750/- and foreign currency of 2081 Us Dollars, 180 UK Pounds and UAE 15 Dirhams was seized under panchanama dated 1.9.2020. Zaid Vilatra's statement was recorded. Zaid Vilatra disclosed that the seized amount was the sale proceeds of the contraband and that he had supplied Marijuna, Ganja, Bud and psychotropic substances to many persons. Zaid Vilatra disclosed a few names with their details. In Zaid Vilatra's voluntary statement, name of Abdel Basit Parihar (Applicant in B.A.(Stamp) 4 1.4-BA-st-2387-2020 No.2184/2020) as a receiver of Ganja/Marijuana, was revealed.

c) Abdel Basit Parihar's statement was recorded. He stated that he purchased and sold Marijuana/ Ganja through Zaid Vilatra and others. He used to supply drugs from Zaid Vilatra and one Kaizan Ebrahim as per instructions of the present Applicant. There were other instances when Abdel Basit Parihar facilitated supply of drugs. He was in contact with Samuel Miranda (Applicant in B.A. (Stamp) No.2205/2020) and the Applicant. As per the NCB's case, Abdel Basit Parihar is an active member of a drug syndicate connected with high-profile personalities and drug suppliers. He used to pay and receive money via credit cards/cash and payment gateways. Abdel Basit Parihar was

arrested on 3.9.2020. In his voluntary statement, Abdel Basit Parihar disclosed the name of Kaizan Ebrahim as a supplier of Charas/Hashish.

d) Based on disclosure by Abdel Basit Parihar; Kaizan Ebrahim's premises were searched. During the search, NCB recovered 0.5 Grams of dark brown substance suspected to be Hashish/Charas. Kaizan Ebrahim's voluntary statement was recorded and he was arrested on 3.9.2020.

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e) Kaizan Ebrahim in turn disclosed that the Applicant used to direct him to deliver contraband to Dipesh Sawant (Applicant in B.A.(Stamp) No.2201/2020). Voluntary statements of Kaizan Ebrahim and Abdel Basit Parihar revealed the name of Samuel Miranda.

f) Samuel Miranda's voluntary statement was recorded and he was arrested on 4.9.2020.

g) The Applicant's voluntary statement was recorded wherein he has allegedly disclosed that Abdel Basit Parihar provided drugs to Dipesh Sawant through Kaizan Ebrahim. On the basis of this material, the Applicant was arrested on 4.9.2020.

h) Dipesh Sawant's name was revealed in the statements of Kaizan Ebrahim and Abdel Basit Parihar. Dipesh Sawant's statement was recorded. He has stated that he got contact details of a Weed and Hashish dealer from the Applicant and Kaizan. Even Dipesh Sawant was arrested on 5.9.2020.

i) In his voluntary statement, Kaizan Ebrahim disclosed the name of Anuj Keshwani as a supplier of Ganja/Marijuana. In his statement, he mentioned about purchase and sale of Marijuana/ 6 1.4-BA-st-2387-2020 Ganja, Charas and LSD. NCB's case is that Anuj Keshwani used to procure drugs from Rigel Mahakala for selling them to Kaizan Ebrahim. There were instances where Anuj Keshwani facilitated supply of drugs and he was in contact with Kaizan Ebrahim. Anuj Keshwani's statement was recorded and he was arrested on 7.9.2020.

j) The affidavit-in-reply further mentions that from Anuj Keshwani, 585 grams of Charas, 270.12 grams of Ganja, 3.6 grams of THC and 0.62 grams (0.1 gram was commercial quantity) of LSD; apart from cash of Rs.1,85,200/- were recovered.

k) This recovery from Anuj Keshwani is important, because according to NCB, the entire case, therefore, is based on recovery of commercial quantity of LSD and, hence, it is not a case of recovery of small quantity of narcotic drugs or psychotropic substance.

l) The affidavit further reveals that in March 2020, the Applicant asked accused Samuel to get bud for Sushant and gave the contact details of accused Zaid Vilatra. The Applicant gave him debit card of co-accused Rhea Chakraborty, using which 7 1.4-BA-st-2387-2020 Rs.10,000/- were withdrawn.

m) On 17.03.2020, he shared Samuel's contact number with Abdel Basit Parihar and drug was delivered to Samuel by Abdel Basit's contact, Zaid in Bandra.

n) On 15.04.2020 also the present Applicant facilitated delivery of Charas with the help of Samuel Miranda. It was delivered to co-accused Dipesh by Abdel Basit's contact Kaizan. Thus, according to the investigating agency, the Applicant was controlling the supply of drugs and financing of such illicit drug dealing directly as well as indirectly.

o) It is further mentioned in the affidavit that the Applicant had received delivery of weeds from Karamjeet through his friend Suryadeep Malhotra at his residence. The Applicant had also received consignments of drug from Samuel Miranda. The Applicant's statement of account reveals that he had transactions with a drug dealer Dwayne.

p) On 1.5.2020, the Applicant asked co-accused Dipesh Sawant to receive Ganja from Dwyane and gave him Dwayne's contact number. Dwayne, in turn, gave his account details to 8 1.4-BA-st-2387-2020 Dipesh, who shared it with the Applicant for balance payment.

q) Accused Karamjeet's premises was searched on 12.9.2020 resulting in recovery of 17 Grams of Ganja, 4 Grams of Charas and Rs. 6 lakhs in cash. Karamjeet in his statement disclosed that he has supplied contraband to co-accused Samuel Miranda many times and some times he received payment from the present Applicant in cash or through GooglePay.

r) Dwayne's voluntary statement disclosed that the Applicant had made payment for Ganja on Dwayne's Axis Bank account. Thus, according to NCB, the Applicant is an active member of a drug syndicate connected with high society personalities and drug suppliers.

5. Based on these allegations and material, NCB has stated in their affidavit that there was sufficient material against the present Applicant to show that he was involved in financing the illicit trafficking of drugs and was dealing in it. It is further their case that the Applicant was aware that Sushant Singh Rajput was engaged in consumption and, yet, he harboured him and concealed him whilst he was engaged in consuming drugs.

9 1.4-BA-st-2387-2020 According to NCB, this would amount to harbouring. It is their case that the applicant allowed his residence for drug storage and procured drugs for Sushant Singh Rajput. The Applicant not only regularly dealt in, but, also financed illicit trafficking of drugs and that he was a conspirator with other accused in the present offence involving commercial quantity of contraband i.e LSD, which was recovered from co-accused Anuj Keshwani.

6. The NCB claims that they have ample material including electronic evidence that the Applicant was involved in drug trafficking. He had facilitated in drug deliveries and payment through credit card / cash / payment gateways for the contraband and, therefore, the Applicant was not entitled for bail. It is mentioned that if he was released on bail at this crucial stage of investigation, it would hamper further investigation. It is specifically mentioned that the drugs which were financed by him were not meant for his personal consumption. The drugs were supplied for consumption by some

other person. Thus, according to NCB, Section 27A of NDPS Act was squarely applicable.

7. It was pointed out by the learned Counsel for the 10 1.4-BA-st-2387-2020 Applicant that the Applicant's statement was allegedly recorded on 4.9.2020. According to him, he retracted such statement on 5.9.2020.

8. The Applicant had preferred Criminal Bail Application No.969/2020 before the Special Court for NDPS at Greater Mumbai for his release on bail. This Application was rejected by the learned Special Judge vide his order dated 11.9.2020. The learned Judge discussed provisions of Section 27A. The learned Judge referred to Section 37 of NDPS Act. He also referred to recovery of commercial quantity of LSD from accused Anuj Keshwani. It was further observed that the investigation was at a preliminary stage and from the available record, it could not be said that, there were no reasonable grounds to connect the Applicant/Accused. According to the learned Judge, bar under Section 37 of NDPS Act operated and, therefore, he was not entitled for release on bail. According to the learned Special Judge, there was possibility to tampering of evidence. On these reasons, his bail application was rejected.

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9. In this background, the Applicant has approached this Court for his release on bail.

#### SUBMISSIONS ON BEHALF OF THE APPLICANT

10. Mr. Maneshinde, learned Counsel for the Applicant submitted that the Applicant has not committed any offence for which rigours of Section 37 of NDPS Act would apply.

11. Mr. Maneshinde submitted that NCB had no authority to conduct the investigation in this case as the order passed by the Hon'ble Supreme Court transferring the case involving death of Sushant Singh Rajput to CBI bars investigation by any other agency than CBI.

12. He submitted that some of the accused are already released by the learned Magistrate. Section 27A is not attracted. Anuj Keshwani from whom the commercial quantity was recovered has no connection with the Applicant. Anuj Keshwani's name was revealed by Kaizan. The Applicant cannot be said to have financed any transaction or harboured any accused. It is not the prosecution 12 1.4-BA-st-2387-2020 case that the Applicant himself spent money in financing such transactions. No contraband was recovered from the Applicant. At the highest, the allegations are that the Applicant was acting at the behest of Sushant Singh Rajput or the Applicant's sister - Rhea Chakraborty. He was not personally involved.

#### SUBMISSIONS ON BEHALF OF INVESTIGATING AGENCY/RESPONDENT NO.1

13. The learned ASG submitted that the NCB was empowered to investigate this case because the subject matter of this case is totally different from the subject matter of Sushant Singh Rajput's death and surrounding circumstances.

14. As against the arguments advanced by Mr. Maneshinde, learned ASG made his submissions on facts based on the affidavit filed on behalf of Respondent No.1. He relied on the facts mentioned in the affidavit; which are reproduced hereinabove, to contend that all the serious offences are made out against the present Applicant and, therefore, he is not entitled to be released on bail.

15. The learned ASG submitted that on 17.3.2020, the Applicant shared accused Abdel Parihar's number with Samuel and 13 1.4-BA-st-2387-2020 thereafter the drugs were delivered. Thus, he was instrumental in that transaction. On 15.4.2020 also he conspired with accused Samuel to facilitate delivery of Charas which was actually delivered to Dipesh Sawant by accused Kaizan. His voluntary statement disclosed that he used Rhea Chakraborty's card for payment of drugs. This Applicant was controlling supply of drugs and was financing such illicit drug dealings directly as well as indirectly. This Applicant has received delivery of Weeds from one Karamjeet through his friend Suryadeep at his residence in Mumbai. The Applicant has received consignment of drugs from Samuel Miranda. His transactions are reflected in his account in respect of the drug purchase from a drug supplier named Dwayne. The statements of accused Dipesh Sawant, Samuel Miranda, Rhea Chakraborty, Abdel Parihar and Suryadeep showed that the Applicant was facilitating commission of the offence and receiving the drug delivery at his own house and at the house of Sushant Singh Rajput.

#### REASONING

16. As Mr. Maneshinde has raised the basic issue as to whether NCB was competent to conduct this investigation, this issue needs to be decided first. According to Mr. Maneshinde, the 14 1.4-BA-st-2387-2020 Hon'ble Supreme Court has transferred the investigation related to Sushant Singh Rajput's death to CBI. Mr. Maneshinde's contention is that all other cases registered in connection with that incident are required to be transferred to CBI and that CBI alone was the proper agency who could have investigated the subject matter of this investigation conducted by NCB. Mr. Maneshinde relied on the directions given by the Hon'ble Supreme Court in Transfer Petition (Crl.) No.225/2020 in the case of Rhea Chakraborty Vs. State of Bihar & Ors. Paragraph-41 of the said order dated 19.8.2020 reads thus :

"41. In such backdrop, to ensure public confidence in the investigation and to do complete justice in the matter, this Court considers it appropriate to invoke the powers conferred by Article 142 of the Constitution. As a Court exercising lawful jurisdiction for the assigned roster, no impediment is seen for exercise of plenary power in the present matter. Therefore while according approval for the ongoing CBI investigation, if any other case is registered on the death of the actor Sushant Singh Rajput and the surrounding circumstances of his unnatural death, the CBI is directed to investigate the new case as well. It is ordered accordingly."

17. On the other hand, learned ASG strongly urged that the Hon'ble Supreme Court has directed that the CBI should investigate 15 1.4-BA-st-2387-2020 any other case registered on the death of actor Sushant Singh Rajput and the surrounding circumstances of his unnatural death. According to learned ASG, the present investigation does not relate to the death of Sushant Singh Rajput and it does not even relate to the surrounding circumstances of his unnatural death. He also submitted

that the investigation in this case has started after secret information was received and the first person, namely, Abbas Lakhani was arrested. The investigation led to various disclosures and recoveries. Consumption of drugs by Sushant Singh Rajput was only one part of the investigation. The investigation ran deep into uncovering a chain of illicit traffic in drugs.

18. In my opinion, the contentions raised by learned ASG will have to be accepted. The subject matter of the investigation by the NCB is different. It started after receipt of information and after arrest of Abbas Lakhani. During the course of this investigation, incidentally it was found that Sushant Singh Rajput used to procure drugs. For that purpose, many others helped him. This investigation led to arrest of many other dealers in illicit traffic of drugs who are unconnected with the death of Sushant 16 1.4-BA-st-2387-2020 Singh Rajput. In this view of the matter, I do not find any force in the submissions of Mr. Maneshinde that NCB is not empowered to investigate into this offence, which is a totally different subject matter.

19. I have decided certain legal issues which are arising in this group of applications. Reference can be made to the order passed in Criminal Bail Application (Stamp) No.2386/2020. I have held that all the offences under the NDPS Act are non-bailable. I have also explained under what circumstances, Section 27A of NDPS Act is applicable.

20. Therefore, now, it is necessary for the Applicant, firstly, to show that the rigours of Section 37 do not apply in his case; and, secondly, if such rigours are not applicable though the offences are non-bailable, this Court should exercise its discretion in granting bail.

21. Apart from allegations of commission of offence punishable under Section 27A, there are allegations that he conspired with and abetted others in committing these offences. Section 29 of NDPS Act reads thus:

17 1.4-BA-st-2387-2020 "29. Punishment for abetment and criminal conspiracy -

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it

an offence punishable under this Chapter, if committed within India."

22. Reading Section 8(c), 20, 22 with Section 29 of NDPS Act, it can be seen that the list of activities brought under provisions of these Sections is quite exhaustive. In the present case, as submitted by the learned ASG, the Applicant appears to be a part of a chain.

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23. Following are the instances, when the Applicant had taken part in the drug transactions. --

(i) 17.3.2020 - Abdel Basit's contact Zaid delivered drugs to Samuel Miranda.

(ii) 15.4.2020 - Abdel Basit's contact Kaizan delivered charas to Dipesh Sawant.

(iii) 1.5.2020 Dwyane delivered ganja to Dipesh Sawant.

Applicant paid money to Dwyane through his bank account.

(iv) Accused Karamjeet has disclosed that he had supplied contraband to Samuel Miranda many times and on some occasions, he received payment from the Applicant in cash or through GooglePay.

(v) There are allegations that the Applicant used to receive weed from Karamjeet through his friend Suryadeep. Thus, the allegations are that the Applicant was in direct contact with drug dealers Abdel Basit Parihar, Dwyane, Kaizan, Karamjeet and Suryadeep. Monetary transactions are reflected in his account. The Applicant was facilitating procurement of drugs 19 1.4-BA-st-2387-2020 from one party for supplying them to Sushant Singh Rajput. He was clearly involved in illicit trafficking or illegal trade of drugs.

24. The Applicant's case will have to be distinguished from that of a consumer or an end purchaser.

25. I have observed in Criminal Bail Application (Stamp) No.2386/2020 that all offences under NDPS Act are non-bailable. The Applicant can not claim his release on bail as of right. The investigation is at a preliminary stage. The Applicant appears to be an important link in the chain of drug dealers. He was in touch with different dealers. He had monetary transactions with them. Disclosure by each of them has led to discovery of involvement of others. Hence it is not desirable to release the Applicant on bail at this stage.

26. Even otherwise, in the chain, the Applicant is connected with Anuj Keshwani through Abdel and Kaizan as previous links. Commercial quantity of contraband is recovered from Anuj. Therefore, rigours of Section 37 would apply since Section 29 of NDPS Act is also invoked. It is not possible to record a satisfaction at this stage that, the Applicant has not committed any offence 20 1.4-BA-st-2387-2020 under NDPS Act involving commercial quantity. Considering the fact that he is part of a large network, it is not possible to observe that he is not likely to commit such offences in



future.

27. At this stage, though the learned ASG has also argued that Section 27A will apply against the present Applicant, I do not feel it necessary to decide this issue at this stage, for the following reasons:

(i) As I have observed in the companion matter i.e. Criminal Bail Application (Stamp) No.2386/2020, Section 27A will not be attracted even against the present Applicant as far as, procurement of drugs and making payment for them for consumption by Sushant Singh Rajput, is concerned.

Similarly, the Applicant cannot be said to have harboured Sushant Singh Rajput for the reasons, which I have discussed in the companion matter. If there is any other material on which the investigating agency is making allegations of commission of offence under Section 27A read with Section 29 of NDPS Act, this will have to be decided at a later stage.

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(ii) Secondly, at this stage, any observation made in this regard will seriously prejudice not only the Applicant, but, also the investigating agency. This is an application at a preliminary stage when the investigation is still going on. The Applicant does not have entire material which the investigating agency has collected against him. Therefore, the Applicant is not in a position to defend himself effectively at this stage in respect of these allegations. Any such observation will also cause prejudice to the investigating agency because they are entitled to keep the material collected during the investigation confidential otherwise it may hamper their investigation. Therefore, this issue can be addressed after the investigation is over.

(iii) In any case, in view of the reasons mentioned in this order for deciding this application, I do not deem it necessary at this stage to decide this issue in respect of the Applicant's case.

28. All these observations made in this order are restricted to this order. The Applicant will have a right to approach the 22 1.4-BA-st-2387-2020 Special Court for NDPS, Greater Mumbai after the investigation is over for his release on bail. If any such application is made, the learned Special Judge shall decide such application, on its own merits in accordance with law without being influenced by observations made in this order.

29. The material gathered so far shows that the Applicant was not only knowing many drug dealers, but, he was in touch with them and was actually transacting with them. Thus, he is part of chain of drug dealers. At this stage, the investigating agency has sufficient material to show that he is a part of a chain of drug dealers engaged in illicit traffic of drugs.

30. Considering all these aspects, I am not inclined to pass order directing Applicant's release on bail. The application is rejected.

Pradeepkumar P. Deshmane 31. This order shall be digitally signed by the Private Secretary of this Court. All concerned shall act on production by fax or email of a digitally signed copy of this order.

(SARANG V. KOTWAL, J.) Deshmane (PS)