

Dipesh Uttam Sawant vs Union Of India on 7 October, 2020

Equivalent citations: AIRONLINE 2020 BOM 2378

Author: Sarang V. Kotwal

Bench: Sarang V. Kotwal

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1.1-BA-ST-2201-2020

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION [STAMP] NO.2201 OF 2020

Dipesh Uttam Sawant,]	
Age : 25 yrs, Occ:Service,]	
R/O : 48/1640,]	
Parn Kutir Co-op Hsg Soc,]	
Subhash Nagar,]	
Near Acharya College,]	
Chembur 400 071]	
And		
1758 Subhash Nagar,]	
Shri Saidham Chs,]	
Building G-5, Subhash Nagar,]	
Chembur, Mumbai 400 071] Applicant
Versus		
1. Union of India,]	
(At the instance of N.C.B.)]	
Mumbai Zonal Unit.]	
2. State of Maharashtra] Respondents

Mr. Rajendra Rathod a/w. Aamir Koradia, Advocate 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. Swapnil S. Pednekar, APP, for Respondent No.2 - State.

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CORAM : SARANG V. KOTWAL, J.

RESERVED ON

: 29.09.2020

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 5.9.2020.

2. I have heard this application along with Bail Applications (Stamp) No.2184/2020, 2205/2020, 2386/2020 & 2387/2020.

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

3 1.1-BA-ST-2201-2020 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. 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 4 1.1-BA-ST-2201-2020 contraband and that he had supplied Marijuna, Ganja, Bud and psychotropic substances to many persons. Zaid Vilatra disclosed few names with their details. In Zaid Vilatra's voluntary statement, name of Abdel Basit Parihar (Applicant in B.A.(Stamp) 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 Showik Chakarborty (Applicant in B.A.(Stamp) No.2387/2020). There were other instances when Abdel Basit Parihar facilitated supply of drugs. He used to procure drugs from Zaid and Kaizan as per instructions of Showik and further used to direct them to deliver contraband to this Applicant. Abdel Basit Parihar was arrested on 3.9.2020.

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.

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e) Kaizan Ebrahim in turn disclosed that Showik Chakarborty used to direct him to deliver contraband to the Applicant.

f) Voluntary statements of Showik shows that Abdel provided drugs to the present Applicant through Kaizan. It is the NCB's case that the Applicant used to take delivery of Ganja on behalf of Showik.

g) The Applicant's voluntary statement was recorded and he was arrested on 4.9.2020. In his statement, he has stated that on 17.3.2020 as per the directions of Showik, he along with Samuel Miranda went to receive delivery of bud/ganja in Bandra from Zaid. On 17.4.2020, Rhea Chakraborty and Showik ordered him to receive a delivery of Charas from one person Kaijan. On 1.5.2020, through WhatsApp chat, Showik asked him to receive Ganja from a person named Dwyane and also shared the contact number of Dwayne. On 2.5.2020, he received Charas from Dwayne. In the first week of June, he received Ganja from a delivery boy of Rishikesh Pawar for Sushant and Rhea. Thus, according to NCB, the Applicant was an active member of drug syndicate.

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h) 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/ 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.

i) 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.

j) 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.

k) It is the NCB's case that the Applicant along with Samuel 7 1.1-BA-ST-2201-2020 Miranda received 5 grams of Ganja on Showik's directions on 17.3.2020. On 17.4.2020, he received Charas from Kaizan at the instance of Rhea and Showik. On 11.5.2020, he received Ganja from Dwayne at the instance of Showik and Rhea. In first week of June he received 2 bags of 50 grams Ganja each from Rishikesh Pawar at the instance of Sushant Singh Rajput.

l) Thus, according to NCB, the Applicant was an active member of a drug syndicate connected with drug supplies. The Applicant used to procure drugs for Sushant Singh Rajput for consumption purpose. Cash payments made for procuring drugs was in knowledge of the present Applicant and, therefore, the Applicant was knowingly involved in procurement of drugs. Based on this material, the Applicant was arrested on 5.9.2020.

m) 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 dealing in drug trafficking. He has connections with other accused and he is a part chain of drug syndicate. He was liable to be punished with other accused in the present offence under Section 29 of NDPS Act.

8 1.1-BA-ST-2201-2020 Commercial quantity of contraband i.e LSD was recovered from co-accused Anuj Keshwani. Hence, bar of Section 37 of NDPS Act will also apply against him.

5. It was pointed out by the learned Counsel for the Applicant that the Applicant's statement was recorded on 4.9.2020 and on one more occasion. According to him, he retracted such statements on 6.9.2020 and 9.9.2020.

6. The Applicant had preferred Criminal Bail Application No.975/2020 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. His application was rejected mainly on the ground that he had committed the offence under Section 29 read with Section 27A of the NDPS Act. The learned Judge has observed that the Applicant was charged for criminal conspiracy under Section 29 of the NDPS Act along with accused Rhea Chakraborty and Showik Chakraborty for offences punishable under Section 27A; and Section 37 would bar his release on bail. The learned Judge has observed that during investigation commercial quantity of LSD is seized from 9 1.1-BA-ST-2201-2020 Anuj Keshwani and that is also held against the present Applicant by taking recourse to Section 29 of the NDPS Act. The learned Judge has observed that the requisite satisfaction under Section 37 could not be recorded. It was also observed that if the Applicant was released on bail, there was possibility of tampering of evidence. On these reasons, his bail application was rejected.

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

SUBMISSIONS ON BEHALF OF THE APPLICANT

8. Mr. Rathod, learned Counsel appearing for the Applicant submitted that Section 27A of the NDPS Act is not mentioned in any of the remand applications. The Applicant was merely a house help and employee of Sushant Singh Rajput. He accepted the delivery of drugs at the instance of Sushant Singh Rajput, Rhea Chakraborty and Showik Chakraborty. There was master-servant relation and the Applicant cannot be held responsible for the offence committed by his master. There was no recovery from his possession. He had no control over the contraband procured by his employer. According to Mr. Rathod, 10 1.1-BA-ST-2201-2020 Section 27A read with Section 29 is not attracted in this case. He relied on a decision of the Hon'ble Supreme Court in the case of Ram Singh Vs.

Central Bureau of Narcotics¹. Mr. Rathod adopted the arguments of Mr. Subodh Desai in the companion matter of Samule Miranda in Criminal Bail Application (Stamp) No.2205/2020.

SUBMISSIONS ON BEHALF OF INVESTIGATING AGENCY/RESPONDENT NO.1

9. As against the arguments advanced by Mr. Rathod, 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.

10. Learned ASG submitted that the offence of Section 27A read with Section 29 of the NDPS Act is also attracted against the Applicant. Both these Sections are quite wide and the Applicant's acts fall within those two sections. He submitted that though 1 AIR 2011 SC 2490 11.1-BA-ST-2201-2020 Section 27A was not applied at the stage of remand, the Court is not bound by the Sections applied in the remand application. The Court will have to look at the entire material available on record. He submitted that there was active participation of the present Applicant. He was an important link and, therefore, he cannot escape his liability.

REASONING

11. 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.

12. Though, the Applicant cannot claim bail as of right as there is sufficient material against him that he has committed an offence under the NDPS Act, the question would be as to whether rigours of Section 37 would apply in his case. The investigating agency's case itself shows that the Applicant was an employee of Sushant Singh Rajput. It is on his or Rhea Chakraborty's 12.1-BA-ST-2201-2020 instructions, the Applicant accepted the delivery of drugs with some help from Showik Chakraborty. The Applicant himself was neither the consumer nor dealer in this offence. Though the wide definition of Section 8(c) read with Section 29 may cover his activities, in that case it is necessary for the investigating agency to show that, he had committed offence involving commercial quantity of the contraband. No recovery was made from Sushant Singh Rajput's house. How much quantity of contraband was accepted and consumed by Sushant Singh Rajput is not brought on record. Therefore, to that extent the prosecution does not have sufficient material to show that the Applicant was connected with any offence including the offence of conspiracy under Section 29 involving commercial quantity of contraband. Based on discussion in Criminal Bail Application (Stamp) No.2386/2020, Section 27A will not be applicable against the Applicant.

13. Learned Counsel Mr. Rathod rightly relied on Ram Singh's judgment (*supra*). The relevant portion in Paragraph-15 of the said judgment reads thus :

13 1.1-BA-ST-2201-2020 "15. Possession is a polymorphous term which carries different meaning in different context and circumstances and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. A servant of a hotel, in our opinion, cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control."

14. In the present case, since the recovery is not established, it is difficult even to establish possession of the contraband by the Applicant. The case against the Applicant does not go to the extent of possession or dealing in the contraband involving commercial quantity.

15. Therefore, the requisite satisfaction that the Applicant has not committed any offence punishable under Sections 19, 24, 27A or any other offence involving commercial quantity can safely be recorded even at this stage.

16. There are no other criminal antecedents alleged against him. There is no sufficient material to show that he is part of any chain as he has not sold the drugs to earn profit. He was acting only at the behest of his employer. Therefore, it can also be recorded that he is not likely to commit any such offence while on 14 1.1-BA-ST-2201-2020 bail. To ensure that he does not commit any such offence, stringent conditions can also be imposed. The Applicant, therefore, deserves to be released on bail. Hence, the following order:

ORDER i. In connection with C.R. No.16/2020 registered with the Narcotics Control Bureau, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

ii. The Applicant shall deposit his passport, if any, with the investigating agency.

iii. The Applicant shall not leave the country without prior permission from the Special Judge for NDPS at Greater Mumbai.

iv. If the Applicant has to go out of Greater Mumbai, he shall inform the Investigating Officer; and shall give his itinerary to the Investigating Officer in advance. v. The Applicant shall attend the office of investigating agency on first Monday of every month between 10:00 a.m. to

15 1.1-BA-ST-2201-2020 11:00 a.m. to mark his presence, for a period of six months. vi. The Applicant shall attend all the dates in the Court unless prevented by any reasonable cause.

vii. The Applicant shall not tamper with the evidence or investigation of the case.

viii. Criminal Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

17. At this stage, Shri Rathod requested to permit the Applicant to furnish cash bail for a period of one month so that the sureties can be arranged within that period. He submitted that considering the prevailing pandemic situation, it will not be possible to complete the formalities to arrange for sureties. Learned ASG left this aspect to the discretion of the Court. Therefore, initially the applicant is permitted to furnish cash bail for the sum of Rs.50,000/- (Rupees Fifty Thousand only) for a period of one month from today. Within that period, the Applicant will have to furnish the sureties, as directed.

18. Learned ASG sought stay of this order for a period of at 16 1.1-BA-ST-2201-2020 least one week from today to enable him to approach the Hon'ble Supreme Court.

19. I have imposed sufficiently stringent conditions on the Applicant. Some further condition can be imposed for a limited period to take care of the request made by learned ASG though I am not inclined to grant stay to the order. If finally the order is set aside and the bail is cancelled, the Applicant will be available for being arrested again. Hence to ensure that even further, one more condition is imposed:

(vii-a) After his release on bail, the Applicant shall mark his presence at the nearest Police Station from his residence anytime between 11:00 a.m. to 5:00 p.m. to show his Digitally signed by Pradeepkumar Pradeepkumar P. Deshmane P. Deshmane availability, for a period of ten days from his release. Date:

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20. 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)