

shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 1 OF 2024

1. AHMED KUNHI B @ KHADER
THROUGH HIS NEXT FRIEND
MOHAMMED ANWAR A,
(PRESENTLY IN JUDICIAL CUSTODY) ...APPLICANT

Versus

1. UNION OF INDIA THR. PUBLIC
PROSECUTOR

2. THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU
PORVORIM GOA. ... RESPONDENTS

Mr. Taraq Sayed with Mr. Kautuk Raikar, Advocate for the
Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

CORAM:- A. G. GHAROTE, J.
DATED :- 11th March, 2024

ORAL ORDER

1. Heard Mr. Raikar for the Applicant and Mr.
Faldessai, learned Additional Public Prosecutor for the
State.

2. This is an application for bail filed by the Applicant

for his release for the offences under Section 8(c) r/w 20(b)(ii)(c) r/w section 29 of the NDPS Act in Special NDPS Case No.3/2019.

3. The bail has been sought on two grounds, one is on the ground of parity, the Accused no. 1, having been released on bail by this Court by the order dated 18.03.2020 in Criminal Application Bail no.318/2019 and also on the ground, that there is no material on record to establish the nexus of the Applicant/Accused no.2 in light of the requirement of Section 29 of the NDPS Act.

4. It is contended that the seizure of two kgs of charas, was actually from the Accused no.1 at the airport where admittedly the Applicant/Accused No.2 was not present. The involvement of the Applicant is alleged on the basis of statement given by the Applicant no.1, which Section 67 of the NDPS Act is claimed to be inadmissible in evidence. It is also contended that though the CDRs are being relied upon, that at the most, even presuming it to be correct, could only place the Accused no. 2 in a location, within the peripheral radius of the reach of the

nearest tower and would not establish, even prima facie, the involvement of the Applicant. It is, therefore, contended that on this ground also the Applicant is entitled to bail, as the trial is a long way in concluding, only 3 out of the 10 witnesses having been examined so far.

5. Mr. Faldessai, learned Additional Public Prosecutor, while opposing this submission, contends that the ground of parity is not available to the Applicant for the reason that the order dated 18.03.2020 in Criminal Application Bail No.318/2019 was based upon the judgment of the hon'ble Apex Court in the case of **Mohan Lal Vs. State of Punjab, CDJ 2018 SC 842**, and the Constitutional Bench of Apex Court in **Mukesh Singh Vs. State (Narcotic Branch of Delhi) 2020 10 SCC 120** has overruled what has been held in **Mohan Lal**(supra). He, therefore, submits that, on this count, the plea of parity is not available to the Applicant.

6. On merits, it is contended that, the statement of Accused no.1 clearly implicates the present

Applicant/Accused no.2 as the person, who was responsible for supplying the narcotic substance to the Accused no.1. That apart, the CDR report placed on record would indicate telephonic conversations between the Applicant and Accused no.1. He therefore submits, that since the trial is likely to be completed within a short period of time, the application be rejected.

7. In so far as the ground of parity is concerned, it would be material to note, that the bail was granted to the Applicant no.1 in Criminal Application Bail No.318/2019, on the ground that the principles as enunciated in **Mohan Lal** (supra), did not permit the Informant to be the Investigating Officer and having so found bail was granted. **Mohan Lal** (supra) as indicated above, has been overruled in **Mukesh Singh** (supra). That apart, the charge sheet would also indicate that on the facts of the matter also the Informant was one Shri Harkesh as against which the Investigating Officer was Shri Haresh S. Gangan, and therefore, both of them were different persons. The plea, therefore, that the

Applicant/Accused no.2 is entitled for enlargement on bail on account of parity, is clearly not tenable and is rejected.

8. On the merits of the matter, it is my considered opinion that the statement made by the Accused no.1 implicating the Applicant/Accused no.2 would be one falling under section 67 of the NDPS act and as held in **Bharat Chaudhary Vs. Union of India, 2021 SCC onLine SC 1235**, cannot be relied upon even for the purpose of opposing the bail. Admittedly, there is no recovery of contraband from the present Applicant who was infact arrested on 26.03.2019, when he was under arrest in some other offence. It is also necessary to note that, though it is contended that there were conversations between the Accused no.1 and the Applicant, there does not seem to be a seizure of any mobile or SIM card or material to indicate that the number with which the Accused no.1 is shown to have had conversations was belonging to the Applicant. Learned Additional Public Prosecutor has not been able to point out from the charge-

sheet, copy of which has been placed on record, any such seizure either in this case or the case in which it is claimed the Applicant was arrested. The CDRs would at the most indicate the conversation between two telephone numbers and the presence of a person carrying that number within a radial distance from the tower and nothing else.

9. Though criminal antecedents are alleged against the accused, however, considering the material, pointed out to me, and the fact that the Applicant has been arrested on 26.03.2019 and has been behind bars for the last nearly five years, and there is no possibility on the trial being concluded in the near future as 7 more witnesses remain to be examined, in my considered opinion a case for bail is made out. Hence the following order:-

ORDER

(a) The Applicant Mr. Ahmed Kunhi B @ Khader, be released on bail on furnishing a P.R. Bond in the sum of Rs.1,50,000/-(Rupees One Lakh Fifty Thousand only) with two solvent sureties in the like amount.

(b) The Applicant shall undertake to remain present before the Special Court during the course of the trial on each and every date, unless exempted.

(c) The Applicant shall furnish his local address and mobile number along with proof to the satisfaction of the Investigating officer.

(d) The Applicant shall surrender his passport, if any, to the Investigating Officer.

(e) The Applicant shall not approach the witness in any manner whatsoever, directly or indirectly.

(f) The Applicant shall not indulge in any offence of any nature while on bail.

(g) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(h) Bail Bonds shall be furnished before the learned Special Court.

(i) It is made clear that the observations herein are made for the limited purpose of granting bail and the learned Special Judge shall not be influenced by the same at the trial.

(j) This bail is limited to the present matter alone and shall not be construed otherwise.

10. The Criminal Bail Application is disposed of in the above terms.

AVINASH G. GHAROTE, J.