

IN THE COURT OF ADDL. CHIEF METROPOLITAN  
MAGISTRATE, 8TH COURT, ESPLANADE, MUMBAI.

R.A. NO. 911 OF 2021	F. No.	:- NCB/MZU/CR-94/021
B.A. NO. 1388/2021		
B.A. NO. 1379/2021		
B.A. NO. 1387/2021		
	Department	:- NCB, Mumbai
	Sections	:- 8(c) r/w 20(b) (ii)(A), 22(b), 22(c), 27, 27A, 28, 29, 35 of NDPS Act

COMMON ORDER BELOW BAIL APPLICATIONS FILED BY  
ACCUSED ARYAN KHAN, ARBAZ MERCHANT AND MUNMUN  
DHAMECHA IN C.R. NO. 94 OF 2021

Read the applications and say of the NCB authority.

2. Heard Ld. Counsel Shri Satish Mane-Shinde for accused no.1, Mr. Taraq Sayyad for accused no.2 and Mr. Ashif Ali Khan for accused no.3 and the Ld. Addl. Solicitor General Shri Anil Singh for NCB at length.

3. The Ld. Counsel for accused no. 1 has relied upon the decisions Sant Lal Gupta & Ors. V/s Modern Cooperative Group Housing Society Ltd. & Ors. (2010) 13 SCC 336, Ranver Singh v/s. State & anr. 2021 SCC Online Bom 3036, Shanoob K.H. V/s. State Police Inspector/Officer in Charge & Anr. 2021 SCC Online Bom 2391, Gaurav Dixit @ Shivaay Sharma v/s. Union of India & Anr. 2021 SCC Online Bom 2262 of 2021 decided by the Hon'ble Special Court for NDPS on 23/09/2021, Harsh Shailesh Shah v/s. The State of Maharashtra, Sk. Sohil Sk. Samir v/s. State of





Maharashtra Cri. Bail Appl. No. 811 of 2018 decided by the Hon'ble Bombay High Court, Nagpur Bench on 03/09/2018, Sangeeta Y. Gaikwad v/s. The State of Maharashtra Cri. Appl. No. 2597 of 2006 decided by the Hon'ble Bombay High Court on 03/08/2006, Stefan Mueller v/s. State of Maharashtra Cri. Writ Petition No. 2939 of 2009 decided by the Hon'ble Bombay High Court on 23/06/2010, Mukesh Kishanpuria v/s. State of West Bengal (2010) 15 SCC 154, Sanjay Narhar Malshe v/s. State of Maharashtra 2005 SCC Online Bom 375, Harsh Sawhney v/s. Union Territory (1978) 2 SCC 365, Mohan Singh v/s. Union Territory (1978) 2 SCC 366.

4. The Ld. Counsel for accused no. 3 has relied upon the decisions of Motilal s/o Badri Prasad B/c Meena v/s. State of Rajasthan S.B. Cri. Misc. Bail No. 10682/2017 decided by the Hon'ble High Court for Rajasthan Bench at Jaipur on 30/08/2017, Sahajan Sekh v/s. State of Kerala decided by the Hon'ble Kerla High Court on 13/01/2016, Dhan Singh v/s. State of Uttarkhanda First Bail Appl. No. 265 of 2014 decided by the Hon'ble Uttarakhand High Court on 28/03/2014, Shammi v/s. U.T. Chandigarh decided by the Hon'ble Punjab and Haryana High Court on 05/07/2019, Vishwajeet Singh v/s. State of U.P. Cri. Misc. 1<sup>st</sup> Bail Appl. No. 13321 of 2000 decided by the Hon'ble Allahabad High Court on 02/11/2000 and Akhlak & Ors. V/s. State of Rajasthan Cri. Revi. Petition No. 342 of 2010 decided on 02/04/2010.





5. The Ld. Addl. Solicitor General has relied upon the decisions Showik Chakraborty v/s. Union of India & Anr. Cri. Bail Appl. (Stamp) No. 2387/2020, T.K. Lathika v/s. Seth Karsandas Jamnadas, Sanjay Narhar Malshe v/s. State of Maharashtra 2005 SCC Online Bom 375 and Reha Chakraborty Cri. Bail Appl. No. 2386 of 2020.

6. I have gone through the decisions cited by the Ld. Counsels for accused and Ld. Addl. Solicitor General. The same will be discussed at appropriate stage.

7. It reveals that the accused have made these applications for bail.

8. The Ld. Counsel for accused no.1 argued that accused no. 1 is Indian Citizen, son of the prominent Bollywood Film Actor has Bachelors Degree of Fine Arts, Cinematic Arts and Television Productions from University of Southern California USA. He is responsible citizen of India. He has been arraigned as an accused in NCB/MZU/CR-94/2021 for an offence punishable under sections 8(c) r/w. 20(b), 27 and 35 of NDPS Act. Lateron, section 28 and 29 of the NDPS Act have been invoked. The accused retracted his statement recorded by NCB. From time to time, he was remanded to NCB custody. Lateron, to judicial custody. He argued that he is innocent, not committed any offence as alleged, falsely implicated in the present case. No recovery was made from him. The same disclosed from panchanam dated 02/10/2021. No narcotic drugs or psychotropic substance have been seized from him. Section 37 of NDPS Act 1985 would not apply in the present





facts and circumstances. There is no evidence to charge accused no.1 for any offence under the said Act. The NCB authority mechanically and without application of mind applied the provisions of NDPS Act, 1985 against accused without any evidence or ingredients to corroborate the same. There is no other credible or admissible material nor does the remand application make out ingredients under section 8(c), 20(b), 27, 28, 29 and 35 of NDPS Act. Without prejudice to the same at the most, the allegations would squarely fall within the ambit of section 20(b) (ii)A which prescribed punishment for the one year or with fine or both. The alleged offence if any is bailable in nature. The accused is ready and willing to furnish bail. There is nothing on record to show in anyway he is connected with the production, manufacture, possession, sale, purchase, transport, import, export or use of any psychotropic substance and the financing illicit trafficking, harbouring in relation to NDPS. He argued that no case against the accused is made out. He argued that he cooperate the investigation authority during NCB custody, will cooperate in future whenever required. He has strong root in the society. The question of abscond, flee away from justice do not arise. He argued that considering the ongoing pandemic extending the custody of the accused will pre-judicial to his physical health as well. He argued that he undertake to abide by any conditions imposed by the court. Prayed for bail.

9. The Ld. Counsel for Arbaz A. Merchant argued that accused Arbaz is law-abiding citizen, arrested in the aforesaid crime, alleged to have committed an offence punishable under





sections 8(c), 20(b), 27, 28, 29 and 35 of NDPS Act. Initially, the accused was arrested, produced before the court, remanded to NCB custody, later on to judicial custody. He argued that the prosecution misguide and mislead the court by concealing material facts. The submission made by the prosecution amounts to playing fraud upon the court by deliberately submitting before the court that the recoveries that were subjectively individual recoveries was combined together to show to the court that there was total recovery of non-commercial/small quantities from the accused. The remand application is totally misleading and was completely silent about the fact that there was no recovery of contraband from accused no.1 and the fact that accused no.1 had no connection with any of the passengers who were to board the cruise on 02/10/2021. The remand application was further totally silent about the fact that the alleged recovery of 6 grams of Charas from the accused was an individual recovery and that he had no connection with any of the other accused persons who were apprehended on 02/10/2021. The entire remand application projects a combined recovery which mislead the court into believing that since the recoveries were non-commercial in nature and the same were combined recoveries the applicant and the co-accused be remanded to NCB custody. It is the case of the NCB itself that besides the alleged connection between the accused applicant and A-1 accused no.1 and accused no.2 had never met or seen any of the co-accused in the case. He argued that the department ought to have prosecute the accused persons individually for individual recovery as each of these accused persons who are alleged to be passengers on cruise ships and





admittedly traveled individually and not in group. The evidence collected so far disclosed the accused was found in possession of small quantity of Charas. The only charge maintainable is under section 27 of the NDPS Act for which maximum punishment is imprisonment upto one year or fine and there is no minimum term of punishment prescribed. The offences to be tried summarily according to section 36 (5) of NDPS Act. He argued that the accused is innocent, not committed any offence, falsely implicated in the present case, the panchanama itself is evidence that the recovery is effected in the instance case and at the alleged spot are independent recovery and the accused has no concerned whatsoever with the alleged recovery is made at the instance of co-accused. Section 29 has been invoked with the malafide intent to rope the accused which he has no connection. He argued that inspite of innovation of section 29 i.e. conspiracy, there is no evidence inter-say between any of the accused persons in the instance case as they were all admittedly travelling individually and not collectively. The alleged recovery is independent which is in a small quantity. There is no connection between the accused and organizer. No evidence to charge to any other offence under NDPS Act except section 27. The above mentioned section prescribed that all the offences which are punishable under this Act for a period of imprisonment more than three years are tried by the Hon'ble Special Sessions Court. However, according to section 36(5), the offences which are punishable less than three years can be tried summarily by this court. As per prosecution case, imprisonment can be awarded upto 1 year. Therefore, this court has sufficient jurisdiction to try this offence summarily. If





considered the case of the prosecution is to be true, the maximum punishment can be awarded is upto 6 months or with fine or both. Therefore, there is no bar to grant bail. He argued that the accused ready to abide by any conditions imposed by the court, ready to cooperate the investigation agencies, will not tamper the prosecution witnesses, permanent resident of Mumbai. Prayed for bail.

10. The Ld. Counsel for accused no. 3 argued that the accused is innocent and law abiding citizen of India. She is not at all connected with the alleged C.R. in any manner. The accused is nowhere related and connected with other two accused as named in the remand application i.e. Mr. Aryan Khan and Mr. Arbaz Merchant nor she has any connection with the other accused in said CR. The respondents have deliberately chosen to prosecute the accused in conjunction with the other two accused even when there is no connection of whatsoever nature with the other accused and the accused herein boarded the ship individually without any communication with the other accused. Since the accused Aryan Khan is the son of Bollywood Superstar Actor Sharukh Khan, the NCB in order to highlight the matter on not just national as well as the international level have falsely implicated the present accused being a model, in the present CR with the accused no.1 without having proven any connection of the present accused and the accused no.1. Thus, the complete criminal remand is filled with malice and ulterior motives for the reasons best known to the NCB. It would not be wrong to say that the NCB since last two years since the demise of actor Sushant Singh





Rajput is vehemently time and again targeting the Bollywood Industry and thus, the present CR which is not just improper, mischievous, spiteful and is a targeted harassment without any specific proof against any accused. The remand copy dated 03/10/2021 and 04/10/2021 leveling sections 8(c), 20(b), 27, 28, 35 of NDPS Act is nowhere applicable on her by any stretch of imagination. He argued that the accused is neither a consumer nor a dealer/financer of any narcotics or psychotropic substances. The accused has nor conspired and nor has committed any crime with any accused severally or jointly. He argued that the alleged recovery with the NCB claims to have been made from the accused i.e. of 5 gms, are recovered from the floor of the room of the accused. It is pertinent to note that, in the said room, there were two other persons present at the same time excluding the accused. He argued that the rigours of section 36A of the NDPS Act ought not be invoked and are not applicable on the present accused as the recovery is not of commercial quantity. He argued that the accused is victimized by said crime. He argued that the accused is ready to abide by any conditions imposed by the court, will not tamper the prosecution witness, assist the investigation agencies whenever required. Prayed for bail.

11. The Ld. Addl. Solicitor General Shri Anil Singh argued that the NCB authority strongly objected for the prayer made by the accused. He submit that the applications are misconceived and inconceived. He denied the contents of bail applications, submit that no case made-out to grant the bail. He further argued that prior to deciding the bail applications of the accused on merit, it is





necessary to see the applications filed by the accused are maintainable or not. Therefore, he raised the preliminary objection on the ground of maintainability of the applications. He argued that first the court to decide the maintainability of the applications, later on the bail applications on merit. He argued that the jurisdiction of this court is within the confines of section 36A of the NDPS Act. It is the prosecution's case that all the persons arrayed in the said CR no. 94 of 2021 are alleged to have committed offences exclusively triable by the Hon'ble Special Court of Sessions. The Hon'ble Bombay High Court has categorically held that all offences under the NDPS act are non-bailable and cognizable. He argued that this court has remanded accused no. 1 to 8 to judicial custody who would be forwarded to the Hon'ble Sessions Court. He argued that this court in its earlier orders in similar facts and circumstances when different accused persons were arrayed in the same CR, on the allegations of conspiracy, has held that the offences being exclusively triable by the Hon'ble Special Court of Sessions, the bail applications before this court are not maintainable. All of these persons are an integral part of a common thread which cannot be separated and hence to be tried together before the Hon'ble Special Court of Sessions. In such situation, the quantum of recovery from an individual accused becomes inconsequential. Thus, in light of the scheme of the Act and the judicial decisions this court does not have the jurisdiction to entertain such bail applications, prayed to reject the same as the same are not maintainable or entertain-able by this court.





12. He further argued that further on initial investigation the present accused alongwith other five accused were arrested in the same CR. There have been several seizures in intermediate quantity from the above co-accused persons in the nature of 13 gms of cocaine, 5 gms of Mephedrone MD, 21 gms of Charas and 22 Pills of MDMA (Ecstasy). He further argued that pursuant to the said seizure and on the basis of leads given by the accused persons during the custodial interrogation. The NCB apprehended Abdul Kadar Shaikh with 2.5 gms of ecstasy and 54.3 gms i.e. commercial quantity of Mephedrone from his conscious possession, Shreyas Surendra Nair with 2 gms of charas from his conscious possession, Manish Rajgaria with 2.4 gms of Ganja from his conscious possession, Avin Sahu with no recovery (only consumption). The said persons are currently remanded to NCB custody till 11/10/2021 in the same CR. He further argued that pursuant to the said seizures and on the basis of leads given by above accused persons during their custodial interrogation. The NCB in the same CR arrested four more persons Samir Sehgal, Manav Singhal, Bhaskar Arora and Gopal Jee Anand, initial investigations reveal that the said persons are the Organizers of the said event. The said persons are currently remanded to NCB custody till 14/10/2021. He further argued that on the basis of leads given by accused no. 1 during his custodial interrogation, the NCB arrested Aachit Kumar and recovered 2.6 gms of Ganja on 06/10/2021. Further argued that on the basis of lead given by accused Abdul Kadar Shaikh during his custodial interrogation, NCB intercepted Nigerian National Chinedu and recovered 15gms of commercial quantity of Ecstasy (MDMA). He argued that prima





facie investigation reveals that there is a close link/nexus of this accused with whom they have conspired in the commission of offences under the NDPS Act coupled with illicit drug trafficking with other co-accused who are already arrested and presently in NCB custody. Hence, each case is connected and is intertwined with each other and cannot be considered in isolation, as the charges relate to conspiracy between all the persons arrested in same CR No. 94 of 2021. It is thus not feasible to dissect or separate each from the other who are having links in the same chain. All ingredients of crime i.e. preparation, intention, attempt and commission are present for these accused. He argued that prima facie their role disclosed in the commission of offence under sections 8(c) r/w 20(b), 27(a), 28, 29 r/w 35 of NDPS Act. He argued that it is not feasible to dissect or separate the accused persons from each other who are having link in the same chain. Thus, the same cannot be considered in isolation and independent recovery cannot be taken into consideration as sought by the accused. He argued that leads given by these accused the NCB authorities made another seizure. Hence, prima facie section 35 of NDPS Act is established. This shows the theory put-forth by the accused is untrue, mislead and mischievous. He argued that if careful perusal of material will clearly show that prima facie ingredients under sections 28 and 29 are clearly made out. He argued that rigors of section 27 are clearly applicable as section 28 and 29 are invoked. He argued that prima facie the involvement of the accused in commission of serious offence. The accused are influential persons. If enlarged on bail will affect the investigation and will tamper the prosecution witnesses. Prayed to reject the





applications.

13. The Ld. Counsel for accused no.1 Shri Satish Mane-Shinde argued that it is well settled that this court has the power to hear the bail applications of the accused. He argued that the Hon'ble Bombay High Court in the case of **Sanjay Narhar Malshe v/s. State of Maharashtra 2005 Cri. LJ 2984** has held that "Obviously, apart from the cases wherein the person is accused of commission of the offence punishable with death or imprisonment for life, the Court of Magistrate has wide power in the matter of grant or refusal of the bail to the accused persons, of course, such power is to be exercised judiciously and the same should be apparent from the order passed by the Magistrate. On the contrary provision of Section 209 make it very clear that the Magistrate while dealing with the committal proceedings is fully empowered either to grant or refuse the bail depending upon the facts of the case. We are fortified in the above view by the decision of the Kerala High Court and the Allahabad High Court which are relied upon by the Ld. Advocate for the Petitioner. In fact the decision of the Kerala High Court is directly in relation to the offence under the said Act. In the case of Shanu (Supra) the Ld. Single Judge of the Kerala High Court after taking note of the provision of the said Act as well as Section 437 of Code held that it is clear that the JCM's Court has got jurisdiction to grant bail to the persons accused of the offence punishable under any of the sub-clause (I) to (xv) of sub-s (1) of S. 3 of the Act. While delivering the said decision the Ld. Single Judge after taking note of Section 437 of Cr.P.C. has observed that the Magistrate is competent to release an





accused, either appeared or brought before him, if the offence alleged is not punishable with death or imprisonment for life. He argued that similarly in Ram Bharoshi's case (Supra) the Ld. Single Judge of Allahabad High Court held that it is abundantly clear that there is no prohibition on a Magistrate to grant bail in a sessions triable case, unless it is punishable with death or imprisonment for life, and it is absolutely necessary that the Magistrate give up the erroneous practice of refusing to consider or grant bails in such cases where there is no prohibition under the Code of Criminal Procedure". While delivering the said judgment it was observed thus 13. there are a number of offences in the Penal Code which are not punishable with death or imprisonment for life, but they are triable by the Court of Sessions, where the Magistrates invariably refuse bail, because they entertain a wrong notion that they are dis-entitled to grant bails in such cases, even if the case is one where bail ought to have been granted on merits. This approach is also in the teeth of a Division Bench decision of this Court, Vijay Kumar & ors. V/s. State of U.P. & Ors. Hence, this court is empowered to hear and decide the bail applications.



The Ld. Addl. Solicitor General Shri Anil Singh relied upon the same judgment i.e. Sanjay Narhar Malshe v/s. State of Maharashtra 2005 Cri. LJ 2984 and argued that in view of para 9 of the said judgment, this court has rightly remanded the accused to the NCB custody and forwarded the accused to the Hon'ble Special Court having the jurisdiction to try the case. He argued that in view of said judgement, it is the Special Court having jurisdiction to consider the application. He argued that if



considered the allegations levelled against the accused and punishment prescribed for it, all the offences are triable by the Special Court. Therefore, this court has not having jurisdiction to entertain the applications. Prayed to reject the applications.

15. If considered the submissions made by the Ld. Counsels for the accused and Ld. Addl. Solicitor General, if minutely gone through the allegations made against the accused, it appears that on the specific information, the team of NCB officers effected seizure of 13 gram of Cocaine, 5 gram of Mephedrone MD, 21 grams of Charas and 22 Pills of MDMA (Ecstasy) and 1,33,000/- INR at International Cruise Terminal, Green Gate Mumbai under panchanama dated 02/10/2021. Pursuant to the said seizure, the NCB registered C.R. No. 94/2021. In connection with above mentioned seizure, the present accused and other five accused were arrested under section 8(c) r/w section 20(b), 27, 28 and 29 r/w 35 of NDPS Act. Further, investigation reveals that apart from these accused and other 10 accused were arrested in connection with this crime under the various provisions of NDPS Act for an offence punishable under sections 8(c), 20b(ii)(A), 22(b), 22(c), 27, 27A, 28, 29 and 35 of NDPS Act. Further, the allegations levelled against accused are in respect of consumption, sale, purchase, and attempt to commit an offence under sections 8(c) r/w section 20(b), 27, 28, 29 r/w 35 of NDPS Act. Further, it is the fact that intermediate quantity as well as commercial quantity of narcotic drugs and psychotropic substance was alleged to be recovered from the other accused for which the punishment prescribed is more than three years.





16. If read section 36A of the NDPS Act which states that all offences under this Act which are punishable with imprisonment for a term of more than 3 years shall be triable only by the Special Court, constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

17. If considered section 36A and the fact that the present accused along-with other accused were arrested in one crime i.e. C.R. no. 94/2021 under the various provisions of the NDPS Act for which prescribed punishment for more than three years. All the alleged offences are exclusively triable by the Hon'ble Special Court. Therefore, this court ceases its jurisdiction to entertain the applications for bail. Hence, the cited supra decisions filed by the Id. Counsels for the accused are of no useful to them as the facts and circumstances of the present case in hand and cited supra decisions are differs from each other. The same are related to the powers of the Hon'ble Sessions Court and the Hon'ble High Court. Considering all these aspects, above discussion, the bail applications filed by the accused are not maintainable before this court. The same are required to be rejected. Hence, rejected.



Mumbai  
Date : 08/10/2021

(R.M. Nerlikar)  
Addl. Chief Metropolitan Magistrate  
8<sup>th</sup> Court, Esplanade, Mumbai

Application No.: 804/21  
Applied on: 21/10/21  
Granted on: 9.10.21  
Ready on: 9.10.21

Delivered on: 9.10.21 True Copy  
Type: xerox  
Urgent/Normal: *True*  
Charges: paid  
Judicial Clerk,  
ACMM 8th Court,  
Esplanade Mumbai