

CNR No. : MHCC02-012719-2021

IN THE COURT OF THE SPECIAL JUDGE FOR N.D.P.S. CASES
AT GREATER MUMBAI

N.D.P.S. BAIL APPLICATION NO. 2626 OF 2021

IN

NCB/MZU/CR-94/2021

Gopalji Anand

Age : 35 years, Occu. : Business

R/o : A1/35, Janakpuri,

New Delhi – 110 058.

... Applicant/Accused no. 16

V/s.

The Union of India,

(Through the Intelligence Officer,

Narcotics Control Bureau,

Mumbai Zonal Unit, Mumbai)

... Respondent

Appearance :-

Shri Vikram Chaudhari with Keshwam Chaudhari, Sajal Yadav, Harsh Gangurde and Mital Shah Advs. for applicant/accused.

Shri Chimalkar with Advait Sethana, SPPs for respondent/NCB.

CORAM : HIS HONOUR THE SPECIAL JUDGE

V. V. PATIL (C.R.NO.44)

DATE : 30th October, 2021

ORDER

This is an application for grant of bail under section 439 of Cr.PC. filed by applicant/accused – **Gopalji Anand**, who is arrested by officers of respondent on 5.10.2021 for violation of provisions under sections 8(c) r/w section 25, 27A, 28 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to as 'NDPS Act, 1985') in connection with C. R. No. 94/2021.

2. It is the case of prosecution that on specific information received,

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the officers of NCB effected seizure of 13 grams of Cocaine, 5 grams 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 dtd. 2.10.2021. Pursuant to said seizure, the respondent registered a case under C. R. No. 94/2021. On initial investigation total 8 persons were arrested. Thereafter in a follow up connection accused nos. 9 to 12 were summoned u/sec. 67 of NDPS Act and they were arrested on 4.10.2021. Further in a follow up action accused nos. 13 to 16 came to be arrested on 5.10.2021.

3. Now, the applicant/accused Gopalji Anand sought bail on the grounds that he is one of the Directors of Canepus Trading Pvt. Ltd., an Independent Show Management Entity, operating under their own brand name 'Namas' cray' company. On 14.08.2021 the company entered into Tripartite Onboard Entertainment Services Agreement with Waterways Leisure Tourism Pvt. Ltd. (Cordelia) and Big Tree Entertainment Pvt. Ltd.(Book My Shows). Boarding Passes were issued by Cordelia and payments were received by Big Tree. The live Entertainment shows onboard the Cordelia Cruise Ship 'EMPRESS', during sailing and onboard entertainment dates, were to be conducted, controlled, managed, regulated and organized by the said Company. Revenue was to be shared.

4. Further it is submitted that though applicant is arrested for violation of provisions of Sec.8(c) r/w 25, 27-A, 28 & 29 of NDPS Act, undisputedly, there is no recovery of any Narcotic Drug Psychotropic Substances from the applicant or at his instance. Embargo under section 37 of the NDPS Act is not applicable. In remand report there are no allegations against the applicant of consuming, carrying, buying, selling

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and transporting any contraband, nor of financing any such activity amounting to any offence under the NDPS Act. Further, it is submitted that applicant was not produced before the Court within 24 hours of arrest and there was illegal detention. The applicant has no criminal antecedents to his discredit. Hence he is entitled to be released on bail. Lastly, he prayed for releasing him on bail.

5. Respondent strongly opposed the application by filing reply. It is contended that all the persons arrested in C.R. No. 94 of 2021 are inextricably connected with each other insofar as their acts and omissions constituting offences under NDPS Act is concerned. As per case of the prosecution, accused no.1 used to procure contraband from accused no. 2 and the sources connected to accused no. 2 from whose possession 6 gms. of Charas was recovered. There is material on record so far to show that accused no. 1 was in touch with some persons abroad who appeared to be a part of an international drug network for illicit procurement of drugs. The investigation revealed that the supplier to accused no.1 i.e. accused no. 17 has been arrested with 2.6 gms. of Ganja. Further supplier of contraband to accused no. 2 namely Shivraj Harijan i.e. accused no. 19 has also been intercepted and arrested with 62 gms. of Charas. It is so far apparent that accused no. 17 and 19 supplied Charas/Ganja to accused no. 1 and 2. The investigation further revealed that accused no. 3 was arrested on 3.10.2021 with 5 grams of Hashish from her conscious possession. Further, 2 subsequent arrests of two Nigerian nationals revealed that they were suppliers of MDMA pills to accused no. 5 Mohak Jaiswal and said Mohak Jaiswal further supplied intermediate quantity to accused no. 6, Ishmmet and accused no. 8, Nupur. Investigation further revealed that supplier of MD to accused no.5 Mohak Jaiswal was accused no. 9 Abdul Qadir.

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6. It is further contention of the prosecution that said accused no. 5 Mohak Jaiswal purchased ecstasy pills from accused number 9 Abdul Qadir who was apprehended with 2.5 gms. of ecstasy and 54.3 gms. of commercial quantity of Mephedrone from his conscious possession. Further prosecution apprehended accused Shreyas Nair with 2 gms. of Charas from his conscious possession and accused Manish Rajgarhia with 2.4 gms. of Ganja from his conscious possession and accused Avin Sahu with no recovery. Further prosecution arrested four other persons who were the organizers of the said event. Prima-facie material shows that ingredients under section 28 and 29 are clearly made out.

7. It is specifically submitted that the applicant, being Director and integral part of organizing the Event, it is in fact presumed that he knows and aware of the passengers, the nature of the Event and acts/omissions which form an integral part of such Event. Hence, prima-facie, the culpable mental state of the applicant is clearly established. It is a fact that the nature of the event was a Rave Party on the said Cruise. Section 27-A is duly invoked. Present applicant is prima-facie involved in the conspiracy of allowing premises and harbouring for the purposes of Narcotic Drugs and Psychotropic Substances. Hence applicant is not entitled to grant of bail. Hence prosecution prayed for rejection of present application.

8. Perused application and say. Heard Ld. Advocate for the applicant and Ld. SPP for the respondent at length. The points for determination along with my findings thereon are as under :-

Sr. No.	POINTS	FINDINGS
1.	Whether the applicant/accused no. 16 is entitled for release on bail?	Yes
2.	What order?	As per final order

REASONS

As to point No.1:

9. It is argued by the Ld. Adv. for the applicant that first of all applicant is falsely implicated in this offence. He has no concern at all with the alleged offence. Nothing has been recovered from applicant. Applicant's company was only organizer of the event of entertainment but had no control on the Cruise. There is absolutely no evidence of harbouring and financing against the applicant. Section 27-A is wrongly invoked. Moreover, there was illegal detention of the applicant at the hands of the officers of the respondent. Panchanama was prepared in absence of any witness. Hence there are violations of constitutional rights of the applicant. Hence for all the above grounds applicant is entitled to be released on bail. It is also argued that there is no nexus between present applicant and other accused and therefore recoveries from other accused persons cannot be held against the present applicant. There is no conspiracy between applicant and co-accused as alleged by the prosecution and hence section 29 is not applicable. In support of his submissions, he relied upon following citations :

1. **Ugochukwu Ubabuko vs. UOI & Anr. In Cri. B.A. No. 585/21.**
2. **Suibo Cassama vs. UOI & Anr. 1993 SCC OnLine Bom. 254.**
3. **D. K. Basu vs. State of West Bengal (1997) 1 SCC 416.**
4. **Madhu Limaye & Ors. 1969 (1) SCC 292.**
5. **Amesh Kumar vs. State of Bihar (2014) 8 SCC 273.**

6. Rhea Chakraborty vs. NOI in Cri. B.A. No. 2386/2020.
7. Showik Chakraborty vs. UOI in Cri. BA no. 2387/2020.
8. NCB Lucknow vs. Md. Nawaz Khan in SC Cri. Appeal No. 1043/2021.
9. Ragini Dwivedi vs. State of Karnataka 2020 SCC Online Kar 2743.
10. Ragini Dwivedi vs. State of Karnataka in Cri. Appeal No. 62 & 63 of 2021.
11. Ranjitsing Sharma vs. State of Maharashtra (2005) 5 SCC 1057.
12. Riyaz Shaikh vs. State of Maharashtra 2018 SCC Online Bom. 20597.
13. ACMM order dtd. 14.10.2021 in RA No. 911/2021.
14. ACMM order dtd. 9.10.2021 in RA No. 911/2021 in case of other co-accused.
15. Aleksander Kurganov vs. State & Anr. 2021 SCC OnLine Bom. 150.
16. Lawarance D'souza vs. State of Maharashtra & Anr. 1991 SCC OnLine Bom 680.
17. Sanjiv Kumar vs. State of H.P. 1999(2) SCC 288.
18. Nicolas Fernandes & Ors. MANU/MH/2666/2021.
19. Directorate of Enforcement vs. Deepak Mahajan (1994) 3 SCC 440.

10. Per contra, it is argued by Ld. SPP appearing for the respondent that on the basis of credible information received, officers of the respondent, effected seizure of certain contraband at International Cruise Terminal Green Gate, Mumbai from the accused nos. 1 to 8 and on the basis of information received in their statement further follow up action was taken and other accused persons were apprehended from whom small, intermediate and commercial quantity of contraband was seized. All the accused form part of drug chain and they are indulging in illicit trafficking. They have acted in conspiracy in commission of offences. Hence sec.29 is invoked. Present applicant, being organizer of

the event, has played the pivotal role in commission of the offence. There is strong evidence against the applicant and hence present application for bail be rejected.

11. In support of his submissions, Ld. SPP relied upon following citations :

1. **Showik Chakraborty V/s. Union of India in Criminal Bail Application (Stamp) No. 2387 of 2020.**
2. **Union of India V/s. Shiv Shanker Kesari (2007) 7 Supreme Court Cases 798.**
3. **Union of India through N.C.B. Lacknow V/s. Md. Nawaz Khan in Criminal Appeal No.1043 of 2021(Arising out of SLP (Cri) No.1771 of 2021 (Supreme Court)**
4. **Durand Didier V/s. Chief Secretary, Union of Territory of Goa (1990) 1 SCC 95.**
5. **State of Orissa V/s. Mahimananda Mishra (2018) 10 SCC 516.**
6. **Union of India V/s. Ram Samujh and Another 1999 SCC (Cri) 1522.**
7. **Collector of Customs, New Delhi V/s. Ahmadalieva Nodira, (2004) 3 SCC 549.**
8. **State of Kerala Etc. V/s. Rajesh Etc. in Criminal Appeal No(s) 154-157 of 2020 (S.C.).**
9. **Union of India V/s. Rattan Mallik @ Habul in Criminal Appeal No. 137 of 2009 (S.C.).**
10. **Bharat @ Mamul s/o Vithaldas Thakkar and another V/s. State of Maharastra – 1991 SCC Online Bom 309.**
11. **Gopal Sen Vs. The state (Govt. of NCT of Delhi) in Bail Application No. 1874 of 2007 (High Court of Delhi).**

**12. Harish Patel V/s. The Inspector of Customs and another- 1996 (3)
ALL MR 605.**

12. Perusal of NCB papers reveal that present applicant is arraigned as an accused being the organizer of the Event of alleged Rave Party. It is not disputed that applicant is one of the Directors of Canepus Trading Pvt. Ltd., operating under their own brand name 'Namas' cray' company who engages in the management of the Entertainment and music events. It is also not disputed that on 14.08.2021 the company entered into Tripartite Onboard Entertainment Services Agreement with Waterways Leisure Tourism Pvt. Ltd. (Cordelia) and Big Tree Entertainment Pvt. Ltd. (Book My Shows). It is contention of the applicant that Boarding passes were issued by Cordelia and payments were received by Big Tree. Applicant's company could not sell tickets, it had no control over Cruise, had no control over the passengers. Cordelia had all the control over the Cruise. Applicant is not concerned with Cordelia.

13. Ld. Adv. for the applicant pointed out my attention towards documents relied upon by the applicant. On perusal of those documents, it revealed that the Company in its promotions vide Instagram Post, Facebook Post, Facebook Event Page, its "Crayark Bible" and the 'Book My Shows' on its Ticket Page, had clearly warned every passenger from abstaining to bring any drugs or illegal substance, in view of their Zero Tolerance Policy for 'Consuming & Distributing drugs/substances', and thereby exercised all due diligence to prevent any commission of offence relating thereto. Thus applicant's company, on their part have taken all necessary precautions. Not only that they have, in clear words mentioned in all the documents that no drugs or

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substances are allowed. It is therefore argued by Ld. Adv. for the applicant that in such circumstances, the applicant cannot be connected with the alleged drugs recovered at the instance of co-accused.

14. Per contra, it is argued by Ld. SPP that applicant, being the organizer of the event must have knowledge about the event i.e. Rave Party which was organized on the Cruise. Therefore culpable mental state of applicant is clearly established.

15. Further it is submitted on behalf of applicant that prosecution has wrongly invoked Sec.27-A of NDPS Act which is in respect of financing illicit traffic and harbouring offenders. It is submitted that in the first remand report, there was allegation of financing against the applicant. Wherein in second remand report, dtd. 6.10.2021, prosecution dropped allegation of financing and kept only allegation of harbouring. There is no evidence at all regarding financing illicit traffic and harbouring of offenders. Therefore, Sec. 27-A is not applicable.

16. As against this, it is submitted by Ld. SPP that investigation revealed that applicant and accused nos. 13, 14 & 15 are an integral part of organizing event on the Cruise, where contraband was seized. They have played active role in financing illicit traffic and harbouring of offenders dealing with drugs i.e. co-accused and hence Sec. 27-A is duly invoked.

17. Hon'ble Bombay High Court in the case of **Rhea Chakraborty (Supra)** held as under :

“64. Section 2 (XXIX) of NDPS Act also permits use of

Cr.PC. to assign meaning to words and expressions. The Hon'ble Supreme Court mainly discussed whether mens rea was applicable. Even in Section 27A of NDPS Act, the concept of mens rea is applicable. Section 52-A of IPC can be used for a limited purpose as mentioned by the Hon'ble Supreme Court. The key words in that Section are "to evade apprehension". This only means that first of all there has to be another offender who has committed the offence. The person who is charged with harbouring that main offender should have supplied him with shelter, food etc. and then the next requirement is that that second person should have done this to prevent the main offender's apprehension. In the present case, no criminal case or FIR was pending against Sushant Singh Rajput. He was residing in his own house and was spending for his own food and other necessities. At that point of time, he had no apprehension of any arrest. Therefore, the act on the part of the applicant cannot be stretched to attract the allegation of harbouring Sushant Singh Rajput."

18. So far as allegations regarding Sec.27-A of NDPS Act are concerned, prosecution has not placed on record any evidence showing that applicant or his company was in any way dealing in financing illicit trafficking and harbouring offenders. There is no evidence regarding harbouring as discussed by Hon'ble High Court in above authority. There is also no any evidence regarding financing illicit traffic as alleged by the respondent. Therefore, Sec. 27-A is not applicable.

19. From the rival submissions and from the documentary evidence

placed on record by the applicant, it can be gathered that applicant's company was only involved in conducting live entertainment shows and live music shows on the Cruise and did not have authority to either regulate entry on board or assign the rooms. It can be gathered that they had no control over the Cruise and the passengers therein. Therefore, applicant cannot be directly said to be connected with the co-accused or with the recovery made at the instance of the co-accused. It is pertinent to note that no one from Cordelia team and sponsors were made accused in the case. Thus, the case of the prosecution cannot be accepted that there was conspiracy in between the applicant and co-accused for commission of offence pertaining to Narcotic Drugs and Psychotropic Substances. Hence Sec. 29 under NDPS Act is not applicable.

20. As discussed above, nothing has been recovered from the applicant. There is no element of conspiracy exists so far as present applicant is concerned. There is no prima-facie evidence regarding financing and harbouring of the offenders against the applicant. Hence Sec. 27-A and 29 is not applicable. Therefore, felters under sec. 37 of NDPS Act would not be applicable. Hence applicant is entitled to grant of bail.

21. It is pertinent to note here that applicant has also raised ground of illegal detention for grant of bail. It is contention of the applicant that he was actually detained on 4.10.2021 but his formal arrest was shown on late afternoon of 5.10.2021. However, even after showing formal arrest, he was not produced before Ld. Magistrate on 5.10.2021. Thereafter, on 6.10.2021 he was produced before the Magistrate. Thus, there is violation of rights of applicant under Article 21 and 22 of

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Constitution of India in producing the applicant before the Court much beyond the period of 24 hrs. of actual arrest and therefore on this ground alone, applicant is entitled to be released on bail.

22. Ld. Adv. for applicant relied upon citations in case of **D. K. Basu (supra)**, **Suibo Cassama (Supra)** **Amesh Kumar (supra)**, **Ugochukwu Ubabuko (Supra)** and **Madhu Limaye (Supra)** and it is submitted that in view of observations made in the above citations, the applicant is entitled to grant of bail for violation of Constitutional rights under Articles 21 & 22 of the Act.

23. Since I have already held above that applicant is entitled to grant of bail on merit, I do not think it necessary to go into the aspect of illegal detention as applicant is otherwise also entitled to be released on bail.

24. While deciding bail application, apart from the gravity and seriousness of the offence, the antecedents of the applicant, possibility of tampering with evidence and likelihood of commission of offence if released on bail are the relevant factors that needs to be taken into consideration.

25. As argued on behalf of applicant, the applicant is permanent resident of Delhi and he is ready to abide by all the conditions imposed by this Court. He has no criminal antecedents as to his discredit. He has deep roots in the Society and he is not likely to abscond.

26. For all the above reasons, I hold that application deserves to be allowed. Hence I answer point no.1 in the affirmative and proceed to

pass following order :

ORDER

1. Bail Application No. 2626/2021 is hereby allowed.
2. Applicant/accused **Gopalji Anand** be released in C. R. No.94/2021 on executing P. R. Bond of Rs. 50,000/- (Rs. Fifty Thousand only) with one or more sureties in the like amount.
3. Applicant/accused shall attend the office of NCB Mumbai Zonal Unit on every Monday in between 1.00 pm to 4.00 pm till filing of charge-sheet.
4. Applicant/accused and his sureties shall provide their respective mobile numbers and correct address of residence alongwith names of two relatives with their mobile numbers and addresses.
5. Applicant/accused shall produce the proof of his identity and proof of residence at the time of the executing the bail bond.
6. Applicant/accused shall not tamper with prosecution witnesses/evidence in any manner and co-operate in early disposal of trial.
7. Applicant/accused shall not commit similar offence while on bail.
8. Accordingly, Bail Application no. 2626/2021 is disposed off.

(V. V. PATIL)
Special Judge (N.D.P.S.),
City Civil & Sessions Court,
Gr. Mumbai.

Date : 30.10.2021

Dictated on : 30.10.2021
Transcribed on : 30.10.2021
Signed on : 30.10.2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
30.10.2021	4.30 p.m.	Mrs. S. W. Tuscano
Name of the Judge		HHJ Shri V. V. Patil (CR No.44)
Date of Pronouncement of Judgment/Order.		30.10.2021
Judgment/order signed by P.O. on		30.10.2021
Judgment/order uploaded on		30.10.2021