

BAIL APPLICATION NO. OF 2020

IN

REMAND APPLICATION NO. 92 OF 2020

IN

NCB/MZU/CR-16/2020

Rhea Chakraborty

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)...Applicant/Accused

Versus

The Union of India

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(Through the Intelligence Officer,

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Narcotics Control Bureau,

)

Mumbai Zonal Unit, Mumbai)

)...Respondents

BAIL APPLICATION

MAY IT PLEASE YOUR WORSHIP

It is most respectfully submitted on behalf of the Applicant/Accused as under:-

1. The Applicant is an Indian Citizen residing at the above-mentioned address along with her family. The Applicant is an actor/model by profession. The Applicant has been a video-jockey on MTV India and thereafter appeared in Bollywood films such as Mere Dad Ki Maruti, Sonali Cable, Half Girlfriend and Ialchi. The Applicant is a well respected member of society.

2. The Applicant has been arraigned as an Accused in NCB/MZU/CR-16/2020 for an offence 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 the "NDPS Act").

3. The Applicant was summoned by the Respondents on 6th, 7th and 8th of September 2020, at which time she duly remained present and cooperated with the investigation. Subsequently, on 8th September 2020, the Applicant came to be arrested in connection with the aforesaid crime. The Applicant was produced before the Ld. Magistrate on the very same day via video conferencing, at which time the Ld. Magistrate was pleased to remand the Applicant to judicial custody as the Respondents in their Remand Application specifically sought judicial custody till 22nd September 2020. The Applicant also filed her Bail Application on the very same day. By an Order dated 8th September 2020, the Ld. Magistrate was pleased to reject the said Bail Application of the Applicant.

4. The brief facts of the prosecution case are as under:

(a) It is alleged that on the 28th of August 2020, the Respondents apprehended Abbas Ramzan Ali Lakhani with 46 grams of marijuana/ganja at Father Peter Periera Road, Sonapur Lane, in front of old Kurla gaon, main entrance gate. It is alleged that Abbas told the Respondents that he purchased the drugs from one person namely Karna Arora of Powai. It is alleged that the Respondents along with Abbas identified and apprehended the said Karna Arora and recovered 13 gms of ganja on 28th August 2020 under a Panchnama. It is alleged that a total of 59 gms of ganja was recovered and both persons were arrested.

(b) It is alleged that based on the disclosures by the Accused, Abbas Lakhani and Karna Arora, the premises of one Zaid Vilatra were searched and

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Indian currency of Rs. 9,55,750/- along with foreign currency of 2081 US Dollars, 180 UK Pounds and 15 UAE Dirhams were seized under a Panchnama dated 1st September 2020 and he was requested to accompany the Respondents to their office. It is alleged that the statement of the said Zaid Vilatra was recorded by the Respondents wherein he has stated that the seized amount is the sale proceeds of contraband and he had supplied marijuana/ganja/bud psychotropic substances and he had disclosed few names with their details. It is alleged that therefore he was arrested on 2nd September 2020 and produced before this Hon'ble Court wherein he was remanded to the custody of the Respondents.

- (c) It is alleged that during the voluntary statement of Zaid Vilatra, he disclosed the name of one Abdel Basit Parihar as a receiver of the ganja/marijuana. It is further alleged that during the statement of the said Abdel Basit Parihar, he revealed the purchase and sale of marijuana/ganja. It is alleged that he used to procure drugs from Zaid Vilatra and Kaizan Ebrahim as per the instructions of Showik Chakraborty who was directing them to deliver contraband to Accused Samuel Miranda. It is further alleged that there are other instances where the Abdel Parihar facilitated to arrange for the drugs and that he was in contact with the Applicant's brother Showik Chakraborty, who is Co-Accused in the present matter. It is alleged that it is clear from the statement of Abdel Basit Parihar and electronic evidence gathered by the Respondents that Abdel Parihar is an active member of a drug syndicate connected with high society personalities and drug suppliers. It is alleged that the Abdel Parihar used to pay and receive money via a Google pay account and further as per the revelations made by Abdel Parihar, he was arrested on 3rd September 2020.

(d) It is alleged that based on the disclosure of Abdel Parihar, Showik Chakraborty was summoned by the Respondents and on the basis of his alleged voluntary statement and involvement in dealing of illicit drugs, Showik came to be arrested on 4th September 2020 for an offence under Sections 8(c) read with 20 (b) (ii), 27A, 28 and 29 of the NDPS, Act.

(e) That during the voluntary statement of Kaizan Ebrahim and Abdel Parihar, they disclosed the name of Deepesh Sawant. It is alleged that his statement was recorded wherein he has stated that he got a contact of weed, Hashish dealer from Showik and dealer name Kaizan. On the basis of his voluntary statement and alleged involvement, Deepesh Sawant came to be arrested and produced before the Learned Magistrate, granting him custody till 9th September 2020.

(f) It is alleged that during the voluntary statement of Kaizan Ebrahim, he disclosed the name of Anuj Keswani as a supplier of the ganja/marijuana. Further, during house search carried out by the Respondents, a total of 585 gms of black colour sticky solid substance purported to be Hashish/charas, a total of 270.12 gms of green leafy, small leafy buds and green leafy granular substance purported to be marijuana/ganja, 3.6 gms of white color powder purported to be THC and 0.62 gms of blot papers purported to be LSD recovered and seized under Panchnama dated 6th September 2020. It is alleged that in his statement, Anuj Keswasni has revealed the purchase and sell of marijuana/ganja, charas and LSD. It is alleged that he used to procure drugs from Rigel Mahalaka with the intent to sell Kaizan Ebrahim. There are other instances where Anuj Keswani facilitated to arrange for drugs and he was in contact with Kaizan Ebrahim. It is alleged that on the basis of his voluntary statement and alleged involvement in dealing in illicit drugs Anuj Keswani was placed under arrest and produced before

- (g) It is alleged that Showik during his statement has revealed that he used to facilitate delivery of drugs through Abdel Parihar by Kaizan Ebrahim and Zaid. It is alleged that these deliveries used to be received by aids of Sushant Singh Rajput and every delivery and payment was in conscious knowledge of the Applicant and even some times payment and choice of drug was confirmed from the Applicant herein.
- (h) It is alleged that Samuel Miranda, in his statement has disclosed that he used to procure drugs on direction of Sushant Singh Rajput and the Applicant, and disclosed that financial matter in this regard were being dealt by the Applicant and Sushant Singh Rajput.
- (i) It is alleged that Dipesh Sawant, in his statement has disclosed that he used to receive drugs for Sushant Singh Rajput on his directions and on several occasions the Applicant also instructed him. It is alleged that financial issues for purchase of drugs were also being dealt by Sushant Singh Rajput and the Applicant. It is alleged that Dipesh Sawant used to receive drugs with Samuel Miranda for the consumption of Sushant Singh Rajput.
- (j) It is alleged that based on disclosure of Showik Chakraborty, Samuel Miranda and Dipesh Sawant, the Applicant was summoned and her voluntary statement under Section 67 of the NDPS Act, 1985 was recorded on 6th, 7th and 8th September 2020. It is alleged that during her statement on all three days, the Applicant was confronted to all other accused persons and facts in their statements were verified. It is alleged that she acknowledged their statements and her role explained. It is alleged that during her statement, the Applicant revealed about her involvement in procurement of drug and financial transaction and also her instructions to

is alleged that the Applicant is an active member of drug syndicate connected with drug supplies. It is alleged that the Applicant used to procure drugs for Sushant Singh Rajput for consumption purpose. It is alleged that the Applicant used to manage finance for drug procurement along with Sushant Singh Rajput. That as per the said disclosures, the Applicant came to be arrested on 8th September 2020 at 1545Hrs for an offence under Section 8 (c), 20(b)(ii), 22, 27A, 28 and 29 of the NDPS Act, 1985.

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5. The Applicant thus prefers this Bail Application on the following amongst other grounds, which are taken in the alternative and without prejudice to one another and prays that this Hon'ble Court be pleased to enlarge the Applicant forthwith on bail in connection with C.R. No. 16 of 2020 registered by the Respondents, on such reasonable terms and conditions as this Hon'ble Court may deem fit to impose in the interest of justice and circumstances of the case.

GROUND S

- (A) That the Applicant is innocent and has not committed any crime whatsoever. The Applicant has been falsely implicated in the present case.
- (B) That the Applicant has been arraigned for an offence punishable under Sections 8(c) read with 20 (b) (ii), 22, 27A, 28, 29 and 30 of the NDPS Act, 1985. Given that no drugs or psychotropic substances have been seized from the present Applicant and the allegations, if any, would pertain strictly to small quantities, and given that though Section 27A has been applied, the ingredients thereof have not been made out, the bar under Section 37(1) of the NDPS Act, 1985 would not apply in the

nature and the Applicant ought to be enlarged on bail forthwith.

- (C) That the Respondents have mechanically and without application of mind applied Section 27A of the NDPS Act, 1985, in respect of the present Applicant without any evidence and/or ingredients to corroborate the same. That a perusal of the Remand Applications of all the Accused who have been arrested in the present case makes it evident that there is nothing on record to suggest that the present Applicant is in any way involved with the financing of illicit traffic and/or harboring of offenders in relation to any narcotic drugs or psychotropic substances.
- (D) That the Remand Applications produced thus far by the Respondents are completely silent as to any allegation of harbouring of offenders as mentioned under Section 27A of the NDPS Act, 1985. As far as the allegation of financing the illicit traffic of narcotic drugs or psychotropic substances, it is the case of the Respondents as per their own Remand Application dated 8th September 2020 and their Reply of the same date that the present Applicant has allegedly only procured any drugs for her late boyfriend Sushant Singh Rajput. The Respondents have contended that the Applicant would “manage finance for drug procurement along with Sushant Singh Rajput” and “procure drugs for Sushant Singh Rajput for consumption purpose.” On the basis of these 2 allegations, the Respondents have alleged that the Applicant is “an active member of drug syndicate connected with drug supplies.”
- (E) That the case of the Respondents is silent as to the amount of financing, quantum of drugs and type of drugs allegedly procured and financed by the present Applicant. The case of the Respondents in layman terms is that the Applicant would co-ordinate the delivery of drugs for her then

boyfriend and occasionally pay for them herself. In essence, her alleged role, if any, is the purchase of a small quantity of drugs for her then boyfriend, which would squarely fall within the ambit of Section 20(b)(ii)(A) which is punishable with a maximum imprisonment of up to 1 year or with fine or both. Hence the allegations against the present Applicant make out an offence that is bailable in nature. That in the present case, the Respondents have used these basic facts to spin a false narrative that portrays the Applicant as being someone who finances the illicit traffic or harbouring of offenders under Section 27A of the NDPS Act, 1985. There is no allegation of the Applicant having procured or financed any drug whatsoever outside of the period during which she was in a relationship with the late Sushant Singh Rajput. The Respondents have also been deliberately vague as to the quantum of finance, if any, which is directly attributable to the present Applicant. That the Respondents have not disclosed any connection between the Applicant and any drug peddlers/ drug suppliers. It is the case of the Respondents that the present Applicant is only connected to the Co-Accused Samuel Miranda and Dipesh Sawant along with her brother Showik Chakraborty.

- (F) That the allegations against the present Applicant would at the most make out a case of purchasing small quantities of drugs which is in essence a bailable offence. There is not a shred of evidence to connect the Applicant with financing any illicit traffic or harbouring any offenders and hence the ingredients of Section 27A of the NDPS Act, 1985 are not made out in the present facts and circumstances.
- (G) That the ingredients of Section 20(b)(ii)(A) squarely cover the alleged purchase of drugs without any requirement of such drugs being

purchased only for self consumption. The case of the prosecution is that the Applicant allegedly purchased drugs for her boyfriend the late Sushant Singh Rajput. These allegations fall squarely within the ambit of the aforesaid section and the resultant offence, if any, would be bailable in nature. (9)

- (H) That it is pertinent to note that despite identical allegations being foisted upon the Applicant and Co-Accused Kaizan Ebrahim, the Respondents chose to selectively apply Section 27A only in respect of the present Applicant and her brother Showik, and also submitted before the Learned Magistrate that Kaizan's custody was not required by them. The said Co-Accused Kaizan was in fact released on provisional cash bail on the very first day of his remand by the Learned Magistrate.
- (I) That during her custody, the Applicant was coerced into making self-incriminatory confessions. That by her Application dated 8th September 2020, the Applicant has formally retracted all such incriminatory confessions.
- (J) That the Applicant was summoned by the Respondents and interrogated for hours on the 6th, 7th and 8th of September 2020 at the NCB office. The Applicant had no access to any legal advice during her questioning when she was interrogated for a minimum of 8 hours at a stretch by multiple male officers. These officers included Kiran Babu, Intelligence Officer, NCB, Zonal Unit, Indore (M.P.), Sameer Wankhede, Zonal Director, NCB, Mutha Ashok Jain, Deputy Director General, South Western Region, NCB, K.P. Malhotra, Deputy Director, NCB and others. The Applicant can identify all of the aforesaid officers. There was not a single lady officer who interrogated the present Applicant as mandated by law

(K) That the Hon'ble Supreme Court in the case of **Sheela Barse v. State of Maharashtra AIR ,1983 SC 378**, has held that interrogation of females should be carried out only in the presence of female police officers/constables. It is evident in the facts of the present case, the aforesaid directive of the Hon'ble Supreme Court has not been complied with.

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(L) That the Applicant was interrogated by the Respondents on the 7th and 8th of September 2020 and infact on the 7th of September 2020, the Respondents even made a statement that the Applicant was cooperating with the investigation. Hence, the arrest of the Applicant is unwarranted and without justification. The Applicant's liberty has been arbitrarily curtailed.

(M) That **Section 20(b)(ii)(A) of the NDPS Act, 1985** provides that where any alleged contravention involves a small quantity, the said contravention would be punishable with rigorous imprisonment with a term which may extend to one year or with a fine which may extend to Rs. 10,000 or with both. Thus the said Section read in conjunction with the provisions of Schedule II of the Code of Criminal Procedure, 1973 would make the present offence, if any, bailable in nature.

(N) That **Section 436 of the Code of Criminal Procedure, 1973**, specifically provides that when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail. Thus it is a well settled position of law that if the offence is bailable, the Accused is

Court held that "...It is well settled position of law that if the offence is bailable, the accused is entitled to be released on bail and even where he does not make an application for bail, it is the responsibility of the concerned police officer, if he has arrested or detained the accused for a bailable offence, to inform him about his right to be released on bail. Similarly, it is also settled position of law that where a person accused of bailable offence appears or is produced before a Magistrate, it is responsibility of such Magistrate to inform him of his right to be released on bail..."

- (O) That the Hon'ble Apex Court in **Rasiklal vs. Kisore AIR 2009 SC 1341** held that "...There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him. The position of persons accused of non-bailable offence is entirely different. The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound to release the

on him..."

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- (P) That in the present facts and circumstances, the alleged offence if any, is bailable in nature and hence the present Applicant being ready and willing to furnish bail, this Hon'ble Court ought to enlarge her on bail forthwith.
- (Q) That the Applicant apprehends serious risk to her life if she were to be unduly detained in judicial custody. The Applicant has been at the receiving end of hundreds of death and rape threats for the past several months. The Applicant has been cooperating with various investigative agencies since inception, without abusing her liberty in any manner. Given the grave risk to her welfare, the present bail application ought to be decided expeditiously.
- (R) That the Applicant has been appearing before the Respondents when summoned and as per the various Remand Applications, the statements of the Co-Accused have already been recorded hence there is no ground for the Respondents to seek that the Applicant be detained in judicial custody.
- (S) That **Abbas Lakhani and Karna Arora**, who were arrested in the present case and from whom a collective quantity of **59 grams of ganja** was allegedly recovered have both been released on bail by the Ld. Magistrate.
- (T) That given that identical allegations have been cast upon all the Co-Accused, but Section 27A of the NDPS Act, 1985 has been applied only on the present Applicant and her brother Showik without substantiation, the present Applicant deserves to be enlarged on bail on the ground of parity as well.

- (U) That there is nothing on record to suggest that the present Applicant is in any way connected with the production, manufacture, possession, sale, purchase, transport, import, export or use of any cannabis/ganja/marijuana or the financing, illicit trafficking and/or harboring of offenders in relation to any narcotic drugs or psychotropic substances and hence the ingredients of any offence under the NDPS Act, 1985 are not prima facie made out in respect of the present Applicant.
- (V) That the allegations being leveled by the Respondents are not corroborated/substantiated in any manner whatsoever.
- (W) That in **Stefan Mueller Vs. State of Maharashtra 2010 (112(7)) BomLR 2990**, the Hon'ble Bombay High Court held that *"...Under Section 37(1)(b) of the NDPS Act, additional conditions or limitations under that Section are applicable only to specified offences in that section. The offences under Section 20(b)(ii)(a) and Section 27 are not such offences and therefore, the conditions or limitations put in Section 37(1)(b) are not applicable to them and as they are bailable offence under Cr.P.C. also, no conditions can be imposed except about appearance before a Court at particular place or on particular date. In view of this, it will be clear that the conditions not to travel abroad without permission of the Court is also not permissible under the law for these offences..."*
- (X) That in **Sk. Sohil Sk. Samir vs. State of Maharashtra in Criminal Bail Application No. 811 of 2018**, the Hon'ble Bombay High Court has held that:
- "...7. So the punishment prescribed for lesser than the commercial quantity but greater than small quantity is ten years with fine of Rs.1 lakh. What is prescribed under Section 20(b)(ii)(A) of the N.D.P.S. Act is that a person if involved in small quantity, i.e. 1000 grams or less, the same is punishable with rigorous imprisonment for a period of one year or fine of Rs.10,000/- or both.*

8. *What is recovered from the present applicant is admittedly 430 grams and in any*

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case same is within the limit of small quantity prescribed under the Schedule.

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9. *That being so, the punishment prescribed under Section 20(b)(ii)(A) is maximum one year and as such, in my opinion, the applicant is entitled to be released.*

10. *Apart from the aforesaid considerations, the fact remains that there are no similar criminal antecedents against the applicant nor it is the case of the prosecution that the narcotic substance seized from both the accused were for commercial trade...*"

(Y) That a Bail Application for an alleged offence which is bailable in nature shall be heard at the same time as the remand and hence in the present facts and circumstances, this Hon'ble Court is bound to allow the present Application at the present stage.

(Z) The position of law is well settled by the Hon'ble Supreme Court in the landmark judgment of **Siddharam Satlingappa Mhetre/ State of Maharashtra (2011) 1 SCC 694** has held that:

'113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.'

'116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.'

(AA) It is submitted that the Hon'ble Supreme Court of India in the landmark judgement of **Sanjay Chandra V/s CBI** relying upon previous judgements clearly said that the purpose of section 439 and 437 is to release the Applicant on bail and the purpose is not to detain an

Accused for the purposes of giving him a taste of conviction prior to the conviction of the court of competent jurisdiction. (15)

- (BB) That the Hon'ble Supreme Court has held in a catena of decisions, that the paramount consideration of bail is the availability of the person for facing the trial and the likelihood of his tampering with the evidence and hampering investigation. Therefore, no coercive procedure may be adopted against the Applicant if she undertakes to make herself available in the trial. In the present case, the Applicant has strong roots in the society and is a permanent resident of Mumbai along with her family members. Thus, the Applicant is firmly based in society and as such there is no likelihood that the Applicant would abscond or flee away from justice.
- (CC) That no incriminating contraband drugs or any other material was recovered at the instance of the Applicant or on her person.
- (DD) That the judicial custody of the Applicant in the present case is unwarranted.
- (EE) That there is nothing on record to suggest that the Applicant would abuse her liberty if enlarged on bail and given that several Co-Accused have already been enlarged on bail, this is a fit case in which bail ought to be granted.
- (FF) That the Applicant is only 28 years old and apart from the present proceedings, has been subjected to three other investigations/enquiries along with a substantial media trial. All of these proceedings have taken a severe toll on the Applicant's mental health and well-being. Any further custody of the Applicant would only worsen her condition.
- (GG) That India is currently dealing with the Covid-19 pandemic and the city

India is recording record spikes in the number of Covid-19 cases. Given
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the factual matrix of the present case and the ongoing pandemic,
remanding the Applicant to extended custody would be gravel
prejudicial to her physical health as well.

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- (HH) That in any event the Applicant is ready and willing to cooperate with the Investigating Agency as and when required.
- (II) That the Applicant undertakes to abide by any reasonable terms and conditions imposed by this Hon'ble Court.
- (JJ) The Applicant has deep roots in society and will not tamper with the investigation or abscond.
6. That no other Application for bail is filed or pending before this Hon'ble Court or any other court in India.
7. The Applicant is in judicial custody, hence her verification may be dispensed with.
8. It is therefore prayed that:
- a) This Hon'ble Court may be pleased to enlarge the Applicant forthwith on bail in connection with C. R. No. 16 of 2020 registered with the Respondents for an offence punishable under Sections 8(c) read with 20 (b) (ii), 22, 27A, 28, 29 and 30 of the NDPS Act, 1985, on such reasonable terms and conditions as this Hon'ble Court may deem fit to impose in the interest of justice and the circumstances of the case; and
- b) For such further and other reliefs as this Hon'ble Court may deem fit to impose in the interest of justice and circumstances of the case.

Mumbai

This 9th day of September 2020

Advocate for the Applicant