

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4396 OF 2021

Siddharth Pithani .. Applicant
Versus
Union of India and anr .. Respondents
...

Mr.Taraq Sayed i/b Advait Tamhankar for the applicant.
Mr.Shriram Shirsat with Amandeep Singh Sra for respondent
No.1- NCB

CORAM: BHARATI DANGRE, J.
DATED : 4th JULY, 2022

P.C:-

1 The applicant, who came to be arrested by the Narcotics Control Bureau (NCB) on 26/5/2021 in C.R.No. 16 of 2020, seek his release on bail on the ground that the complaint do not disclose sufficient material against him, and therefore, his further detention in judicial custody is unnecessary, and it is violative of Article 21 of the Constitution which ensure him right to life and liberty.

2 I have heard Advocate Tariq Sayed for the applicant and Advocate Shriram Shirsat a/w Advocate Amandeep Singh Sra for the respondent, Union of India.

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The Intelligence Officer filed a complaint before the Special Judge for NDPS against the present applicant and one Hemant Shah, in continuation of the NDPS Special Case No.344/2021 against 33 accused persons, on completing the investigation in C.R.No.16/2020 in which, the applicant and Hemant Shah are shown as 'wanted' accused.

3 The original complaint was instituted in the background of an incident dated 28/8/2020, when a team of NCB Mumbai and NCB quarters, New Delhi, apprehended two persons named, Abbas Ramzan Ali Lakhani and one Karan Arora, resident of Powai. Total 59 grams of *ganja was recovered* from the duo and they came to be arrested. During the investigation of the case of late Sushant Singh Rajput (SSR), a film actor, total 35 accused persons were arrested in C.R.No.16/2020. On further investigation with Abbas Ali and Karan Arora, six persons were apprehended and on taking the investigation ahead, based on the alleged disclosure made by Accused no.6, Samuel Miranda and accused no.8 Dipesh Sawant, the applicant was indicted of procurement of ganja/weed/joint/charas at Mumbai. The applicant came to be apprehended from Hyderabad on 25/5/2021 and is accused offences punishable u/s.8(c) r/w Section 20(b)(ii)(a), 27, 27-A, 28, 29 and 35 of the NDPS Act, 1985. His statement u/s.67 of the NDPS Act alleged to be a voluntary one, was recorded, where

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he admit his involvement in procurement, purchase, sale, consumption, preparation under the NDPS Act and accept himself to be a part of conspiracy.

4 The learned counsel Shri Tariq Sayed for the applicant would submit that the accusations faced by the applicant barring under Section 27-A connect him to a small quantity of *ganja* and even on conviction, he would have to suffer Rigorous Imprisonment for a term which may extend to one year or with fine which may extend to Rs.10,000/- or both. As far as the charge faced by him for consumption, punishable u/s.27, the maximum punishment imposed upon him, may extend to one year or fine of Rs.20,000/-. All other offences being u/s.28 and 29, pertaining to abetment would also, at the most, carry the same penalty as for the concerned section with which he is charged.

He would submit that only offence u/s.27A, which he is accused of, shall invite a punishment of Rigorous Imprisonment for a term which shall not be less than 10 years, but which may extend to 20 years and also fine which may extend upto Rs.Two lakhs.

The learned counsel would submit that in the entire complaint, there is no material to establish the accusation of indulging in financing any of the activities, specified in sub-clauses (1) to (5) of clause viii(b) of Section 2 and in absence of any such material, his incarceration is unwarranted. Learned counsel has invited my attention to the various statements

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recorded u/s.164 and according to him, none of them is inculpatory. The three statements of the driver, cook and attendant of Sushant Singh Rajput, which are relied upon by the NCB, according to the learned counsel, do not indict him at all. In short, his statement is that the applicant has no connection whatsoever with the other accused in the instant case and by submitting that the two accused i.e. accused nos.6 and 8 who have named him, are also released on bail. He thus claim parity with them.

5 Per contra, Mr.Shirsat, by referring to the material in the complaint would submit that the applicant was handling the accounts of Sushant Singh Rajput and by referring to his statement u/s.67 of the NDPS Act, he would submit that various entries in the bank statement of Sushant Singh refer to 'Pooja Samagri', which was a code to identify the transaction to buy weed/ganja/charas/marijuana, and according to him, the applicant himself has disclosed the *modus operandi*; being first, the amount was transferred from the main account to secondary account of Sushant Singh and then, Samuel Miranda/Ashok/Sahil Sagar would withdraw the amount and use the cash to buy the narcotics. Mr.Shirsat would submit that the applicant has admitted that he used to operate Sushant's banking Apps and he had specifically admitted that he used to operate the Kotak App from his I-Pad and was personally aware, that this account was used to purchase the contraband. Mr.Shirsat has relied upon the

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bank statement of Sushant Singh Rajput from Kotak Mahindra Bank for the period from 1/3/2017 to 3/8/2020, which refer to numerous entries, showing withdrawal of huge amounts under the caption 'pooja samagri' and by referring to the aforesaid entries, his submission is that since the applicant used to operate the said account, the charge u/s.27-A is made out. Further, by referring to the bank statement of the present applicant, he has invited my attention to five entries recorded in the year 2020 , where some amount is received into his account from Sushant Singh Rajput.

Learned counsel Shirsat would also rely upon various phone calls between the accused persons, and according to him, that substantiate the stand of the department that he used to arrange the contraband in large quantity for Sushant Singh Rajput and therefore, he played a vital role in commission of the offence. In the wake of the application of Section 27-A, the submission is, rigors of Section 37 of the NDPS Act are attracted and according to him, the Special Judge, NDPS has *prima facie* recorded involvement of the applicant in procurement, sale, purchase, consumption and preparation of contraband.

6 With the assistance of the respective counsel, I have perused the complaint along with the material placed on record by the NCB along with its affidavit.

The applicant is accused of financing of illicit traffic and it is necessary to focus upon the relevant provision contained

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in the Act of 1985. Section 27-A reads thus :-

“27-A. Punishment for financing illicit traffic and harbouring offenders.- Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of [clause (viii b) of section 2] or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.”

7 The word ‘financing’ in normal terms would convey providing the money to pay for something. ‘Financing’ in commercial language would indicate the process of providing funds for business activities, making purchases or investing. It may also indicate a process of raising funds or capital or any kind of expenditure and may cover the process of channeling funds in form of credit, loans or invested capital to the economic entities that most need them or can put them to productive use.

When Section 27-A refer to ‘financing’, it necessarily mean an activity where a person provide the finances for illicit traffic in relation to Narcotic Drug and Psychotropic Substances to various activities mentioned in Section 2(viii b) which may include cultivation, engaging in production, manufacture, possession sale, purchase, transportation, use or consumption,

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import, export of Narcotic drug and Psychotropic substances. Since indulging in financing is a serious business and the prime object of the NDPS Act, 1985, being to deal with the menace of drug trafficking, with the country facing problem of trafficking in illicit drugs, the said activity is made punishable with a harsher penalty.

8 Very recently, the term 'financing' used in Section 27-A has been interpreted in case of Rhea Chakraborty Vs. Union of India (Criminal Bail Application St No.2308/2020) by the learned Single Judge of this Court (J, Sarang Kotwal) in the following words :-

"57. "Financing" is not defined under the Act. The Concise Oxford Dictionary defines the word "finance" as "(1) the management of (esp. public) money, (2) monetary support for an enterprise, (3) (in pl.) the money resources of a state, company, or person, to provide capital for (a person or enterprise)".

58. Black's Law Dictionary gives meaning of the word "finance" as "to raise or provide funds".

59. Thus, "financing" as generally understood, is offering monetary support or provide funds.

60. Therefore, simply providing money for a particular transaction or other transactions will not be financing of that activity. Financing will have to be interpreted to mean to provide funds for either making that particular activity operational or for sustaining it. It is the financial support which directly or indirectly is cause of existence of such illicit traffic. The word "financing" would necessarily refer to some activities involving illegal trade or business.

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61. The allegations against the Applicant of spending money in procuring drugs for Sushant Singh Rajput will not, 58 / 70 59 1.3-BA-st-2386-2020 therefore, mean that she had financed illicit traffic.”

It will have to be therefore, ascertained from the material in the complaint whether the applicant has indulged in financing, directly or indirectly, any of the activities specified in sub-clause (1) to (5) of clause (viii)(b) of Section 2.

9 When the material relied upon Mr.Shirsat contained in the charge-sheet is carefully scanned, to ascertain whether the act/conduct attributed to the applicant amount to ‘financing’, I prima facie find the material short of the said accusation.

In order to establish the charge, the NCB heavily fall back on the statement of the applicant recorded u/s.67 of NDPS. Reading the said statement, without focusing on its admissibility or otherwise, at this stage, a reference is found in respect of ‘pooja samagri’ which was and assigned Code in the bank statement of late Sushant Singh. When specifically asked, what he know about the said Code, the applicant has answered as below :-

“Pooja Samagri was the code to identify which transaction was made to buy weed/ganja/hashish/charas/marajuina on bank statements (Kotak) of Sushant Singh Rajput, first amount was transferred from the main account to secondary account, then Samuel Miranda/Ashok/Sahil Sagar would withdraw the amount and use that cash to buy the substance”.

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On being asked whether he was operating Sushant's banking Apps and why, he responded by stating "*after Haokip was fired, SSR had asked him to clear all dues and he used Sushant's phone to clear those dues. He used the I-Phone to add the details in the APP, upon which Sushant received an OTP on his personal I-Phone (read) and SSR himself entered the OTP and the M-pin in the App*".

10 The respondent rely upon the bank statement of Sushant Singh from Kotak Mahindra Bank, where various withdrawals are recorded under the narration "pooja samagri". It is admitted that these are huge amounts and the withdrawals are frequent.

The statement of the co-accused Samuel Miranda recorded u/s.67 is also relied upon by the NCB and when the said statement is carefully read, it make a disclosure that the applicant was associated with Sushant Singh and he has narrated association of the Actor, with several persons in different time frames and the statement is to the effect that Sushant and his friends used to often smoke *ganja* by frequently organizing parties and get together. As far as the applicant is concerned, he is stated to have accompanied him to Patna along with other co-accused. Realizing that Samuel, Haokip were not doing their job properly and many payments were pending, the applicant was introduced in the picture for handling the mobile banking of Sushant. The

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co-accused specifically state that after Samuel, Haokip left, the cook used to organize *ganja* for Sushant and either Siddharth Pithani (applicant) or he himself would transfer him the funds through mobile banking, after asking Sushant and would sent the screen shot to the accountant.

As per Samuel Miranda, in January, when Sushant was not well, the applicant was asked to come and stay with him. Sushant proceeded to Chandigarh along with the applicant and his bodyguard Sahil. One box of joint was given to Siddharth Pithani i.e. the applicant, for SSR.

11 The bank statement of the applicant also form part of the charge-sheet and in the entire statement, covering a period from 1/4/2018 to 29/5/2021, barring five entries of an amount of Rs.20,000/-, Rs.15,000/-, Rs.5,000/-, Rs.6,237/-, Rs.5,000/- received from Sushant Singh, there appear to be no major transaction.

The learned counsel for the applicant offered an explanation that this amount was due and payable to him from Sushant since he was rendering services to him.

12 I also had an opportunity to look into the 164 statements of the driver, cook and the attendant and on it's perusal, I am unable to find any statement attributing role of financing to the applicant, though the house keeping person has stated that his various friends used to party with him, which included the present applicant. The statement of the cook

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recorded u/s.164 throw light upon the life-style of the actor where he refer to various parties being organized. As per this witness, on 14/6/2020, when Sushant was unwell, Siddharth was present in the other room. He had also stated that when he entered Sushant's room to offer juice, the room was filled with smoke and his hands were shaking. Even the 164 statement of the third witness who was his bodyguard, also do not make any reference to the applicant financing the purchase of drugs/narcotics by Sushant Singh.

The statements of the aforesaid witnesses recorded under Section 164, which are heavily relied upon by the prosecution to which the learned Special judge has made a reference without looking into the statements, do not take the case of the NCB any further to establish the charge u/s.27A.

13 From the material compiled in the charge-sheet, it can be discerned that the applicant is accused of smoking ganja and therefore, he is charged with Section 20(b)(iii)(a). His statement u/s.67 refer to certain photographs where he as well as Sushant Singh is seen with joint as well as pipes in their hand. The method of purchasing ganja/charas by SSR appear to be transferring of the amount from one of his account, to his other account in Kotak Mahindra Bank, from where the money was withdrawn and the contraband was purchased by several persons. Though the applicant has handled his accounts, it is not the case of the NCB that he transferred some amount to Sushant Singh

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and from this amount, the contraband was purchased. The Kotak account of Sushant Singh refer to certain withdrawals on account of 'pooja samagri' but that was Sushant's own money and the contraband was arranged for him by the said money.

Prima facie, it appear that the applicant has not financed any transaction in which the contraband consumed by accused was purchased.

When questioned about the details of the first account of Sushant Singh from which the amount was transferred to his account in Kotak, Mr.Shirsat state that there is no investigation on this aspect.

14 Considering the material compiled in the charge-sheet, no case is made out against the applicant for financing the illicit traffic and, therefore, the learned counsel for the applicant is perfectly justified in relying upon the observations in the case of *Rhea Chakraborty* (supra) and he would submit that his case is on a better footing, since the applicant has not provided money, but it was Sushant's own money from which the contraband was purchased.

15 In the wake of the aforesaid material compiled in the charge-sheet, there are no reasonable grounds for believing that the applicant is guilty of financing the illicit traffic in Narcotics/drugs. Without any antecedents, it is not the case of the NCB that he would commit any further offence while on bail. The NCB has not expressed any apprehension about flight risk of

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the applicant. On being satisfied about the two ingredients contemplated u/s/37(1)(ii), recording a prima facie case in favour of the applicant, I am inclined to release him on bail.

By recording that the applicant is prima facie not guilty of the charge u/s.27-A, and as far as the other offences with which he is charged, involving small quantity, the punishment imposed upon him at the most, may extend upto one year, he deserve his liberty.

16 Needless to say that the observations made above are limited to the decision of the present application filed by the applicant seeking his release on bail, and shall not be taken as an opinion expressed on the merits of the prosecution case. Hence, the following order :-

ORDER

- (a) The Applicant – Sidharth Pithani in connection with C.R.No.16/2020 registered with Narcotics Control Bureau shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

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(c) The Applicant shall attend the trial regularly,
unless and until exempted by the trial Court.

16 The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)