



Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 5391 OF 2024**

Syed Sameer Hussain ...Applicant
Versus
State Of Maharashtra and Anr. ...Respondents

Mr. Hrishikesh Mundargi *i/b Mr. Pravada Raut for the Applicant.*

Ms. Manisha R. Tidke, *APP for the State-Respondent.*

Mr. Saket R. Ketkar, *SPP for Respondent No.2-DRI.*

CORAM Dr. Neela Gokhale, J.
RESERVED ON: 23rd September 2025
PRONOUNCED ON: 25th September 2025

JUDGMENT:-

1. By way of this application, the Applicant seeks his release on bail in connection with complaint No. DRI/MZU/C/INT-49/2023 registered with the Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai for offences punishable under Section 21(c), 23(c), 27(A), 28, 29, 30, 35, 54 read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

2. The case set up by the prosecution is as under:

i) On 3rd April 2023, acting on specific intelligence, one Mr. Imran Ahmed Mohammed namely, the Accused No.1 was intercepted at CSMI Airport. He arrived from Ethiopia. Approximately, 1970 grams of cocaine was recovered from his luggage. His statement under Section 67 of the NDPS Act was recorded. In his said statement, he implicated the present Applicant.

ii) The Accused No.1 met the present Applicant, while he was working as a cab driver in a travel agency owned by the Applicant's uncle. It is at the behest of the Applicant that the Accused No.1 got involved in bringing contraband in India from abroad. According to Accused No.1, the present Applicant handled all the logistics of arranging flight tickets, hotel bookings, payments and sources of collection of the contraband. The Applicant gave detailed statements regarding the involvement of the Applicant in the said racket. There were other people involved in the entire web.

iii) Based on the information given by the Accused No.1, the Applicant was apprehended from Hotel R. K. Residency, Vile Parle (E), CSMIA airport road on 4th April 2023 at 13.45 hours. It is the case of the prosecution that the Applicant also gave a confession. He, in turn, implicated an African national namely, one Mr. Morris. According to him, he was working as per the instructions of Mr. Morris.

iv) The Applicant revealed that he communicated with Mr. Morris through WhatsApp calls and WhatsApp chats. Some chats are deleted but the prosecution was able to recover some of them. Sakina Begam, the wife of the Applicant also gave a statement in which she admitted that Accused No.1 was working on the Applicant's instructions. The Applicant was working under Mr. Morris. Mr. Morris has sent huge amounts to the account of Sakina. Her phone and bank account was used by her husband i.e. the Applicant to receive messages from Mr. Morris and others involved as well, to receive funds.

v) On the basis of forensic records, WhatsApp chats, statement of bank accounts and statements made by co-accused, the Applicant herein was also charge-sheeted for the offences as alleged.

3. The Applicant filed an application seeking bail before the NDPS Special Judge and by order dated 7th May 2024, the Special Judge rejected his application. Hence, he has filed the present application for the relief as prayed.

4. Mr. Hrishikesh Mundargi, learned Counsel appeared for the Applicant and Mr. Saket Ketkar, learned SPP represented the Respondent No.2-DRI.

5. Mr. Mundargi submitted that *firstly*, the entire implication of the Applicant is based on the statements given by Accused No.1 as well as the Applicant's wife Sakina. The statement given by the Accused No.1 cannot be read in evidence as it is a statement given to the police. He submitted that there is no recovery of contraband from the Applicant

and neither is there any money trail leading to any deposit in his bank account. He further submitted that the Applicant was arrested on 5th April 2023 and till date charges are not framed. Thus, on the ground of long incarceration of the Applicant, the present bail application must be allowed.

6. Mr. Ketkar has brought to my attention the averments made in the affidavit-in-reply affirmed by one Mr. Kumar Amrish, Deputy Director, DRI, Mumbai Zonal Unit, Mumbai. The entire facts of the case are narrated in the affidavit. Mr. Ketkar also calls to my attention certain WhatsApp chats of the Applicant made with the Accused No.1 as well as Mr. Morris. There are conversations with other persons in respect of exchange of money for the contraband substance. He further submits that the forensic examination of the mobile phones is conducted under *panchanama* and the relevant WhatsApp calls/logs clearly point to the involvement of the Applicant. Mr. Ketkar has also relied on the statements of the bank account of Sakina which shows receipt of huge amounts

from said Mr. Morris. Mr. Ketkar also submits that the call logs indicate as many as 117 calls between the Applicant and the Accused No.1. He thus, strongly resists the bail application and prays that it be rejected.

7. I have heard both the Counsel and perused the record with their assistance.

8. It is settled law that Section 37 of the NDPS Act places certain restrictions on the power of the Court while granting bail to a person accused of having committed an offence under the NDPS Act. The conditions imposed in Section 37(1) is that the Public Prosecutor must be given an opportunity to oppose the bail application and secondly, if such an application is opposed, the Court must be satisfied that there are reasonable grounds for believing that the Applicant is not guilty of such an offence. Additionally, the Court must be satisfied that the Accused person is unlikely to commit any offence while on bail.

9. The Apex Court in a series of decisions has summed up the meaning of the expression “reasonable grounds”. The expression means credible, plausible and grounds for the Court to believe that the Accused is not guilty of the alleged offence. Such facts should exist that can persuade a Court that the Applicant/Accused has not committed the said offence. At the same time, at the stage of considering grant of bail, it is not necessary for the Court to record a finding of guilt of the Applicant/Accused. There is no requirement of weighing the evidence available to arrive at any findings. All that is required is existence of “reasonable grounds” to indicate that the Applicant has not committed the offence.

10. In so far as the facts in the present case are concerned, admittedly, the statements recorded under Section 67 of the NDPS Act cannot be relied upon to demonstrate any guilt of the Applicant. Therefore, these statements must be kept aside. However, these statements are not the only material available on record to indicate the involvement of the

Applicant. The WhatsApp chats recovered by the Cyber Forensic Laboratory from the mobile phones used by the Applicant throw up evidence of his involvement in the smuggling syndicate of the contraband substance.

11. There is material to suggest more than 117 calls of the Applicant to the Accused No.1 and other unknown persons including Mr. Morris. The transcripts of the WhatsApp chats/voice notes are all related to the planning of their operations and logistics including booking of flights, hotels, tutoring other boys in respect of answering questions of enforcement agencies, location of delivery of contraband substance, etc. The Court also cannot lose sight of the fact that as much as 1970 grams of cocaine was seized from the custody of Accused No.1. The same is approximately 20 times that of the prescribed commercial quantity of cocaine. The bank account statement of Sakina also shows receipts of the amounts from the African national called Mr. Morris. This amount is withdrawn by the Applicant to meet expenses

relating to the Accused No.1. Thus, *dehors* the statements made by the co-accused under Section 67 of the NDPS Act there is other circumstantial evidence which dissuades this Court from exercising discretion in favour of the Applicant. It cannot be concluded that there are reasonable grounds to believe that the Applicant has not committed the offence.

12. Considering the magnitude of the operations and the role of the Applicant, the length of incarceration which is approximately two years, by itself cannot be the consideration as a persuasive ground to grant bail to the Applicant. In view of the aforesaid discussion, the rigors of the Section 37 of the NDPS Act are not satisfied. This is not a fit case for grant of bail.

13. Hence, the bail application is rejected.

14. It is made clear that the observations made herein are *prima facie* and the Trial Court shall decide the case on its

own merits, uninfluenced by the observations made in the present order.

(Dr. Neela Gokhale, J)