

**IN THE COURT OF THE SPECIAL JUDGE FOR N.D.P.S. CASES**

**AT GREATER MUMBAI**

**N.D.P.S. BAIL APPLICATION NO. 2589 OF 2021**

**IN**

**NCB/MZU/CR-94/2021**

**Aachit Sudeep Kumar**

Age : 22 years

R/o : 803/804, A-wing,

Lake Lucerne, Lake Homes,

Powai, Mumbai.

**... Applicant/Accused no.17**

**V/s.**

**The Union of India,**

(Through the Intelligence Officer,

Narcotics Control Bureau,

Mumbai Zonal Unit, Mumbai)

**... Respondent**

**Appearance :-**

Shri Ashwain Thool with Ayush Singh, Advs. for applicant.

Shri Advait Sethana, SPP for respondent/NCB.

**CORAM : HIS HONOUR THE SPECIAL JUDGE**

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

**DATE : 30<sup>th</sup> October, 2021**

**ORDER**

This is an application for grant of bail under section 439 of Cr.P.C. filed by applicant/accused no.17 – **Aachit Sudeep Kumar**, who is arrested by officers of respondent on 6.10.2021 for violation of provisions under sections 20(b)(ii)(A), 27(A), 28 and 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. In a further follow up action accused nos. 13 to 16 were arrested on 5.10.2021 and accused no.17 i.e. present applicant was taken into custody by NCB. During his house search/raid 2.6 gms. of Ganja and cash of Rs. 93,000/- was recovered and applicant came to be arrested on 6.10.2021 as he has been named by accused no.1, Aryan Khan and accused no.2, Arbaaz Merchant in their statements.

3. The applicant/accused no.17 Aachit Kumar sought bail on the grounds that he is innocent and he has not committed any offence. The allegations made by the respondent against him are false and baseless. Applicant is a law abiding citizen having no criminal antecedents. There are no chances of his absconding from justice or tampering with any evidence. Neither any incriminating material has been discovered nor any voluntary statement has been given by him while in custody. Hence his further custody is not required. The applicant has been illegally detained by the respondent in contravention to the procedure established by law. Hence he prayed for releasing him on bail.

4. Respondent strongly opposed the application by filing reply at Exh.2. It is contended that the present application is misconceived. That all the persons arrested in C.R. No. 94 of 2021 are inextricably

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connected with each other, insofar as their acts and omissions constituting offences under NDPS Act is concerned. The ground of illegal detention of present applicant was raised before the Magistrate and same is rejected by Ld. Magistrate on the point of no merit. Hence affidavit of applicant's father should not be taken into consideration on the point of illegal detention. It is revealed in the investigation that present applicant was the supplier of contraband of Ganja/Charas to accused no.1 & 2. The present applicant is by no stretch of imagination falsely implicated as alleged in his application and there is sufficient material against him to join the dots in the larger conspiracy with all the accused persons in this C.R.

5. Further it is submitted that accused nos. 1 and 2 traveled together with a common intent to set on the said Cruise. It is prima-facie revealed that accused no.1 used to procure contraband from accused no. 2 and the sources connected to accused no. 2, from whose possession 6 grams 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 appear 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. present applicant has been arrested with 2.6 grams 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 grams of Charas. It is so far apparent that accused nos. 17 i.e. present applicant and accused no. 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 and Cocaine

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to Abdul Kadir Shaikh i.e. accused no.9 who was the supplier of MDMA pills to Mohak Jaswal and the said Mohak Jaswal further supplied intermediate quantity of MDMA pills to Gomit Chopra and Nupur Satija i.e. accused nos. 7 & 8 respectively.

6. It is further contention of the prosecution that accused no. 5 Mohak Jaiswal purchased ecstasy pills from accused number 9 Abdul Qadir who was apprehended with 2.5 grams of ecstasy and 54.3 grams of commercial quantity of Mephedrone from his conscious possession. Further prosecution apprehended accused Shreyas Nair with 2 grams of Charas from his conscious possession.

7. Further, in a follow up connection, accused no.11 – Manish Rajgaria and accused no.12- Avin Sahu were intercepted, they were guests on the said Cruise. A recovery of 2.4 gms. Ganja was also recovered from Manish Rajgaria. Further prosecution arrested four other persons who were the organizers of the said event. All the accused are an integral part of a common thread which cannot be separated and/or dissected from each other. Prima-facie it is revealed that there is close link/nexus of this applicant with whom he has 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 judicial 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 C.R. Prosecution denied the allegation of illegal detention of the applicant and prayed for rejecting the 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. 17 is entitled for bail?	Yes
2.	What order?	As per final order

### REASONS

#### **As to point No.1:**

9. It is argued by Ld. Adv. for applicant/accused no.17 that as per the case of the prosecution itself, applicant was found in possession of 2.6 gms. of Ganja, which is small quantity. Though prosecution cited present applicant as peddler, the prosecution has not stated any single occasion when applicant acted as a peddler. Prosecution has shown arrest of applicant on 6.10.2021. However, the officers of respondent had in fact taken the applicant from his house on 5.10.2021 and he was detained in the office of NCB and on next day i.e. on 6.10.2021, he was shown arrested. Thus, there is illegal detention of the applicant. Further more, the panchanama is fabricated and was not prepared on the spot and therefore, the recovery shown under panchanama is suspicious and cannot be relied upon. There is no evidence against present applicant so as to connect him with any of the accused. There is no evidence on record showing that applicant supplied drugs to accused no.1 or to anybody and therefore, applicant is entitled to be released on bail. Ld. Adv. for applicant relied upon following citations citations.

**1. Birbal Prasad vs. State of Bihar, (2018) 11 SCC 488.**

**2. Sami Ullaha vs. NCB (2008) 16 SCC 471.**

3. Basheer vs. State of Kerala (2004) 3 SCC 609.
4. Ram Govind Upadhyay vs. Sudarshan Singh (2002) 3 SCC 598.
5. Prasanta Kumar Sarkar vs. Ashish Chaterjee, (2010) 14 SCC 496.
6. Rakesh Kumar Paul vs.State of Assam, (2017) 15 SCC 67.
7. Abrar Ibrahim Shaikh vs. State of Maharashtra, 2019 SCC OnLine Bom 7615.
8. Pramod Ganpat Wankhede vs. State of Maharashtra, 2002)2) Mh.L.J. 547.
9. Aravind Mehram Patel vs. NCB, 1991 Cri. L.J. 382.
10. Pragnya Singh Thakur vs. State of Maharashtra (2011) 10 SCC 445.
11. State of Madhya Pradesh vs. Shobharam & Ors., AIR 1966 SC 1910.
12. Ashak Hussain vs. Asst. Collector of Customs, 1990 Cri. L.J. 2201.
13. Amarsingh Barot vs. State of Gujarat, (2005) 7 SCC 550.
14. Sangeeta Gaikwad vs. State of Maharashtra, Cri. App. 2597/2006, Bom. High Court.
15. Akash Jariwalla vs. State of Maharashtra in Cri. B.A. No. 3032/2019, Bom. High Court.
16. Harsh S. Shah vs. State of Maharashtra in B.A. No. 2471/2021, Bom. High Court.
17. Noor Aga vs. State of Punjab & Anr., (2008) 16 SCC 417.
18. Jitin Mothukiri vs. State of Maharashtra, 2020 SCC OnLine Bom 821.
19. Rakesh Kumar Singla vs.Union of India, 2021 (1) Crimes 531 (P&H).
20. Sujit Tiwari vs. State of Gujarat & anr., (2020) 13 SCC 447.
21. Ragini Dwivedi vs. State of Karnataka, 2021 SCC OnLine SC 174.
22. Karim Morani vs. State of Telangana & Anr., 2017 SCC OnLine Hyd., 532.

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 numbers 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. So far as present applicant is concerned, there is evidence on record that he supplied drugs to accused no.1 and there are whats app chats between him and accused no.1. There is strong evidence against the applicant/accused and hence present application for bail be rejected.

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

1. R. Makeswaran V/s. The State, MANU/TN/2909/2015.
2. Naginlal Nandlal V/s. State of Gujarat, MANU/GJ/0140/1961.
3. Rashid Khan & Ors. V/s. The State, MANU/RH/0178/1993.
4. Union of India V/s. Ram Samujh and Ors., MANU/SC/0530/1999.
5. Union of India V/s. Ratan Mallik, MANU/SC/0076/2009.
6. Durand Didier V/s. Chief Secretary, Union Territory of Goa, MANU/SC/0173/1989.
7. Union of India and Ors. V/s. Bharat Chaudhary & Ors., MANU/TN/5234/2021.
8. Dilbagh Khan & Ors. V/s. State of Punjab, MANU/PH/0686/2021.
9. Nandu Subhash Varpe V/s. The State of Maharashtra in B.A. 666/2021.

10. Union of India (NCB) V/s. Md. Nawaz Khan in Cri. Appeal No. 1043/2021.
11. Kerry Kelvin Mendes V/s. NCB in BA Exh.4 in Spl. Case 624/21.
12. Ikechukwu C. Stanley & Ors. V/s. NCB, MANU/DE/2955/2018.
13. Amarsingh R. Barot V/s. State of Gujarat, MANU/SC/0569/2005.
14. Ishika V/s. State, MANU/DE/0383/2021.
15. Abdel Basit Parihar V/s. Union of India, 2020 SCC OnLine Bom. 8032.
16. Anil Sharma V/s. State in BA 127/19 & Cri. M.As. 5620/19 & 10963-64/19.
17. Khet Singh V/s. Union of India, MANU/SC/0205/2002.
18. Arya Chelatt V/s. State of Kerala, MANU/KE/1436/2021.
19. Virupakshappa Gouda & Anr. V/s. State of Karnataka & Anr. In Cri. Appeal No. 601/17.
20. Satyaboina Chandrasekhar V/s. State of Telangana in Cri. P. No. 3930/18 and Kesireddy Nikhil Reddy V/s. State of Telangana in Cri. P. No. 5050/18.
21. State of Rajasthan V/s. Babu Lal @ Jagdish Gwala in S.B. Crml. Leave to Appeal No. 211/19.

12. The first ground agitated by the applicant for grant of bail is illegal detention. It is submitted that prosecution came with case that name of applicant was disclosed by accused no.1 – Aryan Khan and accused no.2 – Arbaaz Merchant in their statement recorded under section 67 of NDPS Act. Thereafter, voluntary statement of applicant was recorded on 6.10.2021 and on the basis of revelations made by him, he was placed under arrest on 6.10.2021 at 19.00 hrs. at NCB office, Mumbai. However, applicant is having CCTV footage of his building which show that applicant was taken from his house by the



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officers of respondent at 5.14 pm on 5.10.2021 and he was detained illegally and he was shown arrested on 6.10.2021 at 19.00 hrs. Ld. Adv. for applicant relied upon citations in the case of **Arvind Patel (supra)**, **Pragyna Thakur (supra)** and **Shobharam (supra)** on the point of illegal detention and submitted that on the ground of illegal detention itself, applicant is entitled to be released on bail

13. Per contra, it is vehemently argued by Ld. SPP that the same ground of illegal detention was raised by applicant at the time of remand before Magistrate also. Ld. Magistrate considered the submissions and rejected the stand of applicant of illegal detention. The applicant has not challenged the said order and therefore, the order of Magistrate holds field as on today. Therefore, the applicant cannot raise same ground again. It is further submitted that applicant is relying upon the photographs of alleged CCTV footage which cannot be considered at this stage. There is no mention of CCTV footage in the bail application and therefore, this aspect cannot be dealt with at this stage. Further more, applicant was taken by officers of NCB for interrogation and after following due procedure, he came to be arrested. There is difference in the concepts of custody, detention and arrest. The record and arrest memo show that applicant was placed under arrest on 6.10.2021 at 19.00 hrs. Therefore, there was no illegal detention as alleged by the applicant. In support of his contention, he placed reliance on the case of **Sandeepkumar Bafna (supra)**.

14. The respondent mainly objected the application on the ground of connection of applicant with accused no.1. It is the contention of the respondent that accused no.1 used to procure drugs from present applicant, who was supplier of drugs. There is evidence in the form of

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whats app chats between the applicant and accused no.1 which shows the dealing in drugs. During the hearing of application, the whats app chats were shown to the Court by Ld. SPP. It reveals that there are whats app chats between accused no.1 and present applicant in respect of the contraband. Therefore it appears that the applicant was in touch with accused no.1 as alleged by the respondent.

15. The respondent came with a case that though applicant is found with small quantity of 2.6 gms. of Ganja, his role is that of supplier. He supplied Ganja to accused nos. 1 & 2 which is reflected from whats app chats. Thus they have acted in conspiracy with each other to commit the offence under the NDPS Act. Hence Sec. 29 is applicable.

16. However it is pertinent to note that though respondent claimed that applicant is supplier, respondent failed to bring on record specific evidence to show that applicant is dealing in business of supplying the contraband. Except whats app chats with accused no.1, there is no other evidence to show that applicant was indulging in such activity. Merely on the basis of whats app chats, it cannot be gathered that applicant used to supply contraband to accused nos.1 & 2, especially when the accused no.1, with whom there are whats app chats of applicant, is granted bail by Hon'ble High Court.

17. So far as submissions of Ld. SPP regarding conspiracy are concerned, aspect of proving the conspiracy which deals with depth is required to be considered only at the time of trial. But prima-facie it needs to be shown by the respondent that there is case of conspiracy and abatement.

18. It is argued by Ld. Adv. for the applicant that applicant is a young boy who is taking his education at abroad. There is no any instance to show that he acted as a supplier of contraband. There is nothing on record to show that there was any conspiracy between applicant and accused no.1. Hon'ble High Court pleased to grant bail to accused no.1 and hence on the ground of parity, present applicant be also released on bail.

19. I find substance in the arguments advanced by Ld. Adv. for the applicant. So far as allegations of conspiracy are concerned, accused no.1 & 2 with whom, present applicant allegedly acted in conspiracy is granted bail by Hon'ble High Court. Hence Sec. 29 cannot be said to be applicable to present applicant. Therefore felters u/sec. 37 of NDPS Act would not apply. Since Hon'ble High Court pleased to grant bail to accused nos. 1 to 3, present applicant is also entitled to grant of bail on the ground of parity.

20. So far as contention of the applicant regarding grant of bail on the ground of illegal detention is concerned, I do not think it necessary to go into the aspect of illegal detention. Since otherwise also applicant is entitled to be released on bail.

21. 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.

22. As argued on behalf of applicant, the applicant is permanent

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resident of Mumbai 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 and not likely to flee from justice. Hence he is entitled to grant of bail.

23. 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. 2589/2021 is hereby allowed.
2. Applicant/accused **Aachit Sudeep Kumar** 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. 2589/2021 is disposed off.

Date : 30.10.2021

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

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	5.00 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 PO. on		30.10.2021
Judgment/order uploaded on		30.10.2021