

IN THE COURT OF ADDL. CHIEF METROPOLITAN
MAGISTRATE, 8TH COURT, ESPLANADE, MUMBAI.

R.A. NO. 911 OF 2021 F. No. :- NCB/MZU/
CR-94/2021
Department :- NCB, Mumbai
Sections :- 8(c) r/w 20(b),
27, 28, 29, 35 of
NDPS Act

ORDER BELOW REAMD APPLICATION

Accused Aryan Khan, Arbaz Merchant and Munmun Dhamecha are produced before the Court today at 3.30 p.m. by the Superintendent of NCB, Zonal Unit, Mumbai and WPC Shinde. They have no complaints of ill-treatment at the hands of NCB authority. NCB authority prayed for NCB custody of the accused till 11/10/2021.



2. Perused remand report, case diary/ Heard Addl. Solicitor General Shri Anil Singh for the NCB, Investigating Officer Sameer Wankhede and Ld. Counsel for the accused no.1 Shri Satish Mane-Shinde, Shri Tarak S. S. and Ali Kaashif Khan at length.

3. The Ld. Addl. Solicitor General has relied upon the decision of Reha Chakraborty v/s. The Union of India Criminal Bail Appl. (Stamp) No. 2386 of 2020 decided by the Hon'ble Bombay High Court decided on dated 07/10/2020.

4. The Ld. Counsels for the accused have relied upon the decisions of Akash Jariwala vs The State of Maharashtra, Union of India (Customs Narcotic Cell), Pune Criminal Bail Appl. No. 3032 of 2019 decided by the Hon'ble Bombay High Court on dated 22/01/2020, Sanjay Malshe v/s. State of Maharashtra 2005 SCC Online Bom 375, Stefan Mueller v/s. State of Maharashtra Criminal Writ Petition No. 2939/2019 decided by the Hon'ble Bombay High Court on 23/10/20, Sujit Tiwari vs State of Gujrat & Anr. 2020 (13) SCC 447, Sangeeta Y. Gaikwad vs The State of Maharashtra Criminal Appl. No. 2597 of 2006 decided by the Hon'ble Bombay High Court on dated 03/08/2016 and Sk. Sohil Sk. Samir vs State of Maharashtra Criminal Appl. (BA) No. 811 of 2018 decided by the Hon'ble Bombay High Court, Nagpur Bench on dated 03/09/2018.

5. I have gone through the decisions cited by the Ld. Counsels for the parties. The same are related to the bail of the accused in an offence punishable under the NDPS Act. The same will be considered at appropriate stage.



6. The Ld. Addl. Solicitor General argued that the teams of NCB officers effected seizure of 13 gms of cocaine, 5 gram of Mephedrone MD, 21 gms of Charas and 22 Pills of MDMA (Ecstasy) and 1,33,000 INR at International Cruise Terminal, Green Gate Mumbai under panchanama dated 02/10/2021. Pursuant to the said seizure, crime bearing no. 94/2021 was registered. He argued that on the basis of voluntary statement and

the seized panchanama dated 02/10/2021 the accused were arrested for their involvement in consumption, sale, purchase and attempt to commit an offence punishable under sections 8(c), 20(b), 27, 28, 29, r/w 35 of NDPS Act and they were produced before the Ld. Court wherein the Ld. Court granted one day NCB custody. He argued that the investigation so far conducted clearly reveals there is incriminating material in form of what's app chats etc. clearly showing the nexus of these accused with a suppliers and peddlers on a regular basis. Thorough investigation in that regard is required to be carried out. In the wake of ongoing investigation, the links required to be verified and corroborated. In this connection the other five accused were arrested in this case and it has been emerged that confrontation in between the above named accused are must to verify the facts, obtain the more leads. Shocking and incriminating material has been found from the mobile of accused no.1 which was seized. There are link in the form of pictures, chat etc. pointing towards an international drug trafficking. There are several suspected characters, whose identification is still to be established by accused no.1. Considering serious nature of offence, investigation and the custodial interrogation of the accused is necessary. Hence, prayed for NCB custody of the accused.

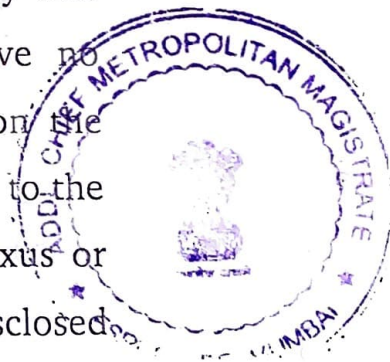


7. The Ld. Counsels for the accused no. 1 to 3 strongly objected for the prayer made by the prosecution. It is the submission of Ld. Counsel for accused no.1 that the accused no.1 is innocent, not committed any offence as alleged by the NCB

authorities. The allegations made against the accused are totally false. Nothing was seized from his possession. The allegations if taken as it is as per the case of the prosecution and the punishment prescribed for it, the accused cannot be remanded to police custody. He is required to be taken in judicial custody and enlarged on bail. He further argued that in view of decisions cited supra his custodial interrogation is not at all necessary. Prayed for Judicial custody and prayed for bail.

8. The Ld. Counsels for other accused argued that they are innocent and false implicated in this offence. They argued that the remand paper itself disclosed that no specific recovery of alleged contraband from the possession of the accused was effected. Nothing was seized from them. The alleged recovery was made from the other accused to which the accused have no concerned whatsoever with it. They further argued that on the basis of what's app chats, which are alleged to be made prior to the alleged incident cannot be relied upon to establish the nexus or chain with the present crime. The allegations nowhere disclosed the role of the accused in the commission of the offence. Therefore, the question of remanding the accused to the NCB custody do not arises. Prayed for their judicial custody.

9. If considered the submissions made by the Ld. Counsels for both the parties, minutely gone through the contents of remand report as well as the case diary produced by the NCB authority and the decisions cited supra, it appears that by virtue of decisions



passed by the Hon'ble Bombay High Court in case of Reha Chakraborty vs Union of India & Ors., the Hon'ble Bombay High Court held that all the offences under NDPS Act are non-bailable. Therefore, the question of discussing as to whether the offences are bailable or not do not arise.

10. The question arises for the reasons stated in the remand report, custodial interrogation of the accused is necessary or not.

11. If considered the allegations made against the accused and the fact that apart from the present accused, other five accused were also apprehended on the cruise by the NCB team for suspicious transactions constituting offence under NDPS Act wherein it is alleged they were possessing intermediate quantity of Narcotic drugs and Psycotrics substance. If considered this fact and the fact that the accused are to be confronted with the other co-accused, the information collected so far is to be verified, investigation with regard to the nexus of the accused is to be find out. I am of view that the investigation is at initial stage, which is of prime importance, for the reasons stated in the remand report, the presence of the accused with the NCB authorities is necessary for detailed investigation. It will be useful to the prosecution as well as to the accused to prove their innocence. Considering all these aspect, above discussions, the accused are required to be remanded to the NCB custody. Hence, they are remanded to the



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NCB custody till 07/10/2021.

Copy of order be forwarded to Hon'ble CMM, Esplanade.

Cik
4-10-21

(R. M. Nerlikar)

Date :- 04/10/2021.

Addl. Chief Metropolitan Magistrate
8th Court, Esplanade, Mumbai

Authenticate Copy.

gum
4/10/21

Judicial Clerk,
A.C.M.M. 8th Court, Esplanade
Mumbai

