

IN THE SPECIAL COURT FOR NARCOTIC DRUGS AND  
PSYCHOTROPIC SUBSTANCES ACT, 1985, AT GR. BOMBAY

BAIL APPLICATION NO. 969 OF 2020  
(CNR No.MHCC02-008412-2020)

IN

ENo.NCB/MZU/CR-16/2020.

Showik Indrajit Chakraborty



Applicant/Accused

V/s

The Union of India  
(Through the Intelligence Officer  
NCB, Mumbai, Zonal Unit, Mumbai)

Respondent

**Appearance :**

Ld. Adv. Mr. Satish Maneshinde for applicant/accused.  
Ld. SPP Mr. Sarpande for NCB.



CORAM : H.H. THE SPECIAL JUDGE (NDPS)  
SHRI G.B.Gurao (C.R.43)

DATE : 11/09/2020.

1. This is an application for bail by accused Showik Indrajit Chakraborty in ENo.NCB/MZU/CR-16/2020 u/sec 439 of Code of Criminal Procedure, 1973.

2. Facts in brief are as under.

On 28.08.2020, a team of NCB, Mumbai and NCB Headquarters

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Greater Bombay

New Delhi apprehended with Abbas Ramzan Ali Lakhani alongwith 46 gms of Marijuana/Ganja. Abbas told that he has purchased the drug from Karn Arora. Accordingly, NCB team apprehended Karn Arora and seized 13 gms of Ganja from him. Panchanama was prepared. Thus total 59 gms of Ganja was recovered and both the accused were arrested. Based on disclosure by accused Abbas and Karn, NCB team searched the premises of accused Zaid Vilatra and seized Rs.9,55,750/- and foreign currency 2081 US Dollars, 180 UK Pounds and UAE 15 Dirhams under panchanama. Accused Zaid Vilatra was brought to NCB office. His statement was recorded and he stated that the seized amount is the sale proceeds of contraband. He had supplied Marijuana/Ganja/Bud psychotropic Substances to many persons and he disclosed few names with their details. Accused Zaid Vilatra disclosed the name of accused Abdel Basit Parihar, receiver of Ganja/Marijuana. During the statement Abdel Basit Parihar revealed that he purchases and sales of Marijuana/Ganja through accused Zaid and Kaizan. He obtained drugs from accused Zaid and accused Kaizan Ebrahim as per instructions of accused Showik Chakraborty. Accused Abdel Basit Parihar has also disclosed that, he facilitated to arrange the drugs and he was in contact with accused Samuel Miranda and accused Showik Chakraborty. Accused Abdel Basit used to pay and receive money of contraband via Credit cards/Cash and payment gateways.



3. Accordingly, accused Mohd. Kaizan Ebrahim was interrogated by NCB team and he disclosed the name of accused Anuj Keshwani as supplier of Ganja/Marijuana. His statement was recorded. Accused Keshwani was dealing in the purchase and sell of Ganja, Charas and LSD. He used to procure drugs from Rigel Mahakala with intent to sell



to accused Kaizan Ebrahim. Accused Anuj Keshwani was in contact with accused Kaizan Ebrahim. On the basis of statement of accused Keshwani, NCB team seized,

1)	Charas -	585 Grams
2)	Ganja -	270.12 Grams (In form of Buds, Pre rolled Joints, Indian weed)
3)	THC -	3.6 Grams
4)	LSD -	0.62 Grams (0.01 grams is commercial quantity and recovered 0.64 grams which is much more than commercial quantity)
5)	Cash -	Rs.1,85,200/- (Rupees One lakh eighty five thousand and 5000 Indonesian Rupiah)

from his possession.

4. Prosecution case further reveals that, during the statement, accused Showik Chakraborty it is revealed that he used to facilitate the delivery to arrange drugs through accused Abdel Parihar by accused Kaizan Ebrahim and accused Zaid. These deliveries used to be received by aids of Late Sushant Singh Rajput and every delivery and payment was in knowledge of accused Rhea Chakraborty and even sometimes payments and choice of drug was confirmed from accused Rhea Chakraborty.

5. Accused Samuel Miranda and accused Dipesh Sawant were the staffers of Late Sushant Singh Rajput. During the statement, accused Samuel Miranda disclosed that he used to procure drugs on the direction of Sushant Singh Rajput and accused Rhea Chakraborty and disclosed that financial matter in this regard were being dealt by accused Rhea Chakraborty and Late Sushant Singh Rajput. During the statement, accused Dipesh Sawant disclosed that he used to receive drugs for Sushant Singh Rajput on his directions and on several occasions accused Rhea Chakraborty also instructed him. Furthermore,



the financial issues for purchase of drugs were also being dealt by Late Sushant Singh Rajput and accused Rhea Chakraborty. Thus, accused Dipesh Sawant and accused Samuel Miranda used to receive drugs for consumption of Sushant Singh Rajput.

6. Further story of the prosecution is that, based upon disclosure of accused Showik Chakraborty, accused Samuel Miranda and accused Dipesh Sawant, accused Rhea Chakraborty was summoned and her statement was recorded on 06.09.2020, 07.09.2020 and 08.09.2020. During her statement on all three days she was confronted to all accused persons and the facts in their statements were verified. Accused Rhea Chakraborty acknowledged their statements and her role explained. During the statement accused Rhea Chakraborty revealed about her involvement in procuring of drug and financial transaction and also her instructions to accused Samuel Miranda, accused Dipesh Sawant and accused Showik Chakraborty in this regard. Thus, all accused were active in drug syndicate connected with drug supplies. Accused used to procure drugs for Sushant Singh Rajput for consumption purpose.

Accordingly, the crime u/sec.8(c) r/w 20(b)(ii)(A), 22, 27(A), 28, 29 and 30 of the NDPS Act is registered and now the crime is under investigation.

8. Mr. Satish Maneshinde Learned Advocate for applicant/accused has submitted that he is innocent and he has not committed any crime. The accused has arrayed for an offence punishable under section 8(c) r/w 20(b)(ii), 27-A, 28 & 29 of the NDPS Act, 1985. However, no drug or

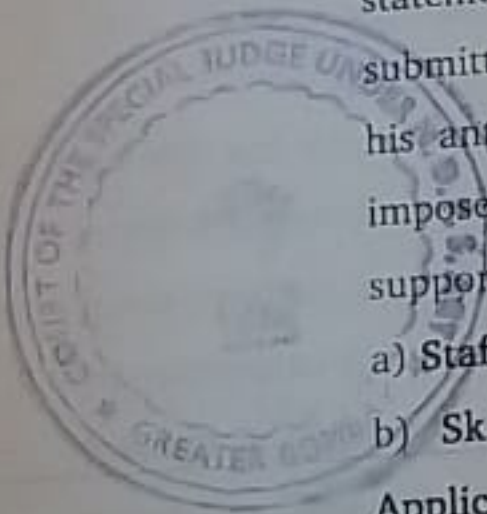




psychotropic substance have been seized from the accused. The allegations if any would pertain strictly to small quantities. Therefore, section 27-A of NDPS Act do not apply. Thus, in a given circumstances and offence is bailable. The prosecution has mechanically and without application of mind has applied section 27-A of the NDPS Act, 1985 against the accused without any evidence. If we perused remand papers of all accused then it is evident that there is nothing on record to suggest that the present accused is in any way involved financing, illicit trafficking or harboring of offenders in relation to any narcotic drugs or psychotropic substances.

9. Mr. Satish Maneshinde Advocate for applicant/accused has further submitted that co-accused Kaizan Ebrahim and Abbas Lakhani and Karan Arora are released on bail. However, the prosecution has applied section 27-A only in respect of the present accused, in view that he should not get bail. According to him, accused was coerced into making self incriminatory confessions which were subsequently retracted by him at the first opportunity before Learned Magistrate. Thus, the statement of the accused is inadmissible in evidence. He further submitted that accused is from well to do family. He is a student and his antecedents are clear. He is ready to abide by the conditions imposed by the Court. He prayed to release the accused on bail. In support of his contention he relied on;

- a) **Stafan Mueller Vs. State of Maharashtra** 2010 (112(7)) BomLR 2990.
- b) **Sk. Sohil Sk. Samir Vs. State of Maharashtra** in Criminal Bail Application No.811 of 2018, c) **Siddharam Satlingappa Mhetre/State of Maharashtra** (2011) 1SCC 694, d) **Pawan Kumar @ Monu Mittal V. State of Uttar Pradesh** (SC) 2015(3) SCC(Cri)27, e) **K.K. Ashraf Vs.**



State of Kerala, Bail Application No,5251/2009; MANU/KE/1166/2009,  
1) Raju Premji Vs. Customs NER Shillong Unit, (SC); 2009(16)SCC 496.

10. Mr. Atul Sarpande Ld. SPP for NCB/Union of India has submitted that contention made in the application are frivolous and false. Accused is charged with section 27-A r/w section 29 of the NDPS Act. Section 27-A of NDPS Act is cognizable and non-bailable. Further in the present crime there is recovery of commercial quantity of contraband from the accused Anuj Keshwani. Hence the offence is serious and there is a bar to release the accused on bail under section 37 of NDPS Act. The accused in his statement has specifically stated that he dealt with drug on behalf of Sushant Singh Rajput or otherwise and paid the amount for the drug delivery to Samuel Miranda and Dipesh Sawant and others. Therefore, it is clear that applicant has actively added abetted and financed other accused persons for the drug transactions in pursuance of criminal conspiracy which is an offence punishable with same punishment i.e. up to 20 years for the offence under section 27-A of NDPS Act.



Mr. Sarpande Learned SPP for NCB/Union of India has further submitted that WhatsApp chats and Google pay record were retrieved from the mobile, Laptop and hard disk and it indicates payment were made of the drug. He further submitted that as per statement of accused he was making payment for the drug and accused Samuel Miranda and Dipesh Sawant used to take delivery of drugs. Investigation is at preliminary stage and the names of other persons are also revealed therefore, if the accused is released on bail then he will alert other persons and further investigation will be frustrated. He



prayed to reject the application.

12. As per section 37 of NDPS Act 1985 every offence under under this Act to be cognizable and non bailable. Sub section (i) (a) reads that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be cognizable. The scheme of the Act shows that for some offence punishment up to one year is prescribed, for some offence punishment up to 3 years is prescribed. In **Stefan Mueller Vs. State of Maharashtra 2010 (112(7))**, Hon'ble Bombay High Court ruled 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.PC. 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."

13. Accused has come with a specific case that no contraband was seized from his possession. The allegations against the accused that as per the say of accused Reha Chakraborty he procured drugs from accused Abdel Basit. Accused Kaizan Ebrahim and Zaid Vilatra for late Sushant Singh Rajput. However, the quantity of said drug (Ganja) is a small quantity. At the most accused can be convicted for one year and thus offence is bailable.

14. However, according to the prosecution accused is involved in illicit trafficking of drug. Accused is financed for a drug for late Sushant Singh Rajput and he has some time made payments of the drug. The delivery of drug were accepted by accused Samuel Miranda and Dipesh Sawant and therefore accused has committed an offence punishable under section 27 A of the NDPS Act.

15. It is pertinent to note that in section 27(A) of the NDPS Act no particular quantity of the drug is required to prove the offence.

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16. It is to be noted that statement of accused is recorded by NCB Officers. In his statement he has stated that he has dealt with drug on behalf of Sushant Singh Rajput or otherwise and paid amount for drug to delivery to Samuel Miranda and Dipesh Sawant and others. The WhatsApp chats and Google pay record was also retracted in this crime. Further accused has admitted that he was making payment of the drug and therefore, it is clear that accused has financed to illicit trafficking of the drug. It is also the contention of the prosecution that accused is conspirator alongwith co-accused.

17. The contention raised by the accused is that he has retracted statement before Learned Metropolitan Magistrate. Therefore, the said retracted statement is inadmissible in evidence and the statement is hit by the provision of Section 25 of India Evidence Act.

18. In *Raju Premji Vs. Customs NER Shillong Unit*, (SC); 2009(16)SCC 496; Hon'ble Supreme Court held in para 24 that in any event if they were in custody of the police officers as also the customs



officers, although they were not accused in strict sense of the term, any confession made by them would not be admissible in terms of Section 26 of the Evidence Act, 1872.

19. However, we are at preliminary stage and not conducting mini trial therefore at this juncture what is the record is before the Court is to be seen.

20. Therefore, now in the given circumstances, whether accused is entitled for bail. Section 27-A of the NDPS Act as discussed above is in respect of the illicit trafficking of drug, considering the punishment prescribed for the offence punishable under this section offence is non-bailable. In **K.K. Ashraf Vs. State of Kerala, Bail Application No.5251/2009; MANU/KE/1166/2009**, Hon'ble High Court of Kerala held in para 17 and 18 as;

17. Apart from mentioning Section 27A as an offence which is alleged to have been committed by the accused, there is no factual foundation for an allegation that they have committed an offence under Section 27A of the Act. There is no allegation that the petitioner indulged in financing, directly or indirectly, any of the alleged activities. There is also no allegation that the petitioner has harboured any person engaged in such activities. The materials on record show that the first accused Shanavas purchased the heroin from the petitioner (second accused) for a sum of Rs.1,80,000/- and some amount is due to the petitioner. That means the consideration was not paid in full to the petitioner. What is the balance amount due is not forthcoming. The question is whether sale of narcotic drug to a person reserving a part of the price to be paid by the purchase later would amount to "financing" within the meaning of Section 27A of the Act. The expression "financing" is not defined in the act. In Blacks Law Dictionary, the verbal meaning of "finance" is shown as "to raise or provide funds" In Chambers Dictionary, the meaning of "finance" is shown as "to manage financially' to provide or support with money". If a person has sold narcotic drugs or psychotropic substances on credit, could it be said that he has indulged in financing? If the full amount is realised by such sale, it cannot be said that he has indulged in financing. What difference it would make if a part of the consideration is reserved to be



paid at a later point of time? To my mind, it cannot be said that receipt of part payment of the sale consideration of the contraband reserving the balance to be paid at a later point at a later time would attract the offence of "financing" within the meaning of Section 27A of the Act. Sale of narcotic drug on credit is different from financing the activity of sale of a narcotic drug. It cannot be said that a person who did not receive the value in full of the drug would be in a more disadvantageous position than a person who got the full price of the same. The expression "financing" is not related to the payment of the value of the narcotic drug. On the other hand, it involves an activity other than sale or purchase of the narcotic drug, in which a person invests or provides funds or resources for facilitating the activities mentioned in Sub-clauses (i) to (v) of Clause (viii) of Section 2 of the NDPS Act. "Financing" involves the presence of a party who is not a party to the sale of the drug. "Illicit traffic" is defined in Section 2(viii) of the Act. Activities under Sub-clauses (i) to (v) of Clause (viii) of Section 2 are referred to in Section 27A. Section 27A deals with persons who indulge in financing, directly or indirectly, any of the aforesaid activities. It is relevant to note that the expression "illicit traffic" as defined in Clause (viii) of Section 2 includes financing, directly or indirectly, any of the activities mentioned in Sub-clauses (i) to (v). Clause (viii) of Section 2 reads as follows:

2. Definitions:-

(viii) "illicit traffic", in relation to narcotic drugs and psychotropic substance, means:

- (i) cultivating any coca plant or gathering any portion of coca plant;
- (ii) cultivating the opium, poppy or any cannabis plant;
- (iii) engaging in the production, manufacture, possession, sale, purchase, transaction, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psycho-tropic substance;
- (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in Sub-clauses (i) to (iii); or
- (v) handling or letting out any premises for the carrying on of any of the activities referred to in Sub-clauses (i) to (iv);

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes:

- (1) financing, directly or indirectly, any of the aforementioned activities;
- (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and
- (3) harbouring persons engaged in any of the aforementioned





activities;

18. Thus it is clear that in order to attract Sections 27A. There must be an allegation of financing or harbouring as mentioned therein. There is no such allegation against the petitioner. Since no allegation of financing or harbouring is made, prima facie, I am of the view that Section 27A is not attracted and therefore the bar under section 37(1) (b) would not be available in favour of the prosecution.

21. However, the fact of the above case are different to the facts of the present case. It is specific allegation against the accused that he procured drug for late Sushant Singh Rajput by financing the same. Therefore, I most respectfully submit the ratio laid down in the above ruling is not applicable to the case in hand.

22. There are stringent provisions of bail under section 37 of NDPS Act. As per sub Section (2) of section 37 of the NDPS Act, no person accused of an offence punishable for ( offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless Public Prosecutor has been given an opportunity to oppose the application for such release and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Sub section (2) of Section 37 of NDPS Act reads that, the limitation on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitation under the Code of Criminal Procedure, 1973, or any other law for the time being in force for granting of bail.

23. It is to be noted that there is an embargo to grant bail to the person who is accused of an offence under section 19 or section 24, 27

A of the NDPS Act or offences involving commercial quantity. Section 19 is for punishment for embezzlement of opium by cultivator. Section 24 is in respect of punishment for external dealing in narcotic drugs and psychotropic substances in contravention of section 12. As stated above section 27-A of the NDPS Act is for punishment for offence of illicit traffic and harbouring offenders. In all these sections legislature has not described any specific quantity of drug. In view of rigour of section 37 of the NDPS Act the Court has to record the finding that there are reasonable grounds to believe that accused is not guilty of offence. It is also to be kept in mind that Court has not to consider the material as if it is pronounced the Judgment of acquittal or recording finding of not guilty.

Any

24. From the record it is seen that accused Rhea Chakraborty and late Sushant Singh Rajput were in live-in relationship. Present accused is brother of accused Rhea Chakraborty and it is alleged that he procured drug for Sushant Singh Rajput on the instruction of accused Rhea Chakraborty and at some times he made payment. The drug were arranged from accused Zaid Vilatra and Abdel Basit. NCB had recovered WhatsApp chats and other electronic evidence. The investigation is at preliminary stage. Further in the present case the commercial quantity contraband i.e. LSD is recovered from accused Anuj Keshwani. Hence, at this stage from available record it can not be said that there are no reasonable grounds to connect the accused with alleged crime. Thus, in the present case there is bar under section 37 of NDPS Act to release the accused on bail.



25. In addition according to the prosecution accused has taken the



## ORDER

(G.B. Gurao) 4/9/40  
Addl. Sessions Judge  
Gr. Bombay.  
C.R. 43

Certified to be a True Copy  
 Dated this 14<sup>th</sup> day of Sept 20 20  
 P. H. Bhowade  
 P. H. Bhowade  
 City Sessions Court Bombay