

2020 SCC ONLINE BOM 925 .

## **Rhea Chakraborty v. Union Of India**

Bombay High Court (Sep 11, 2020)

### **CASE NO.**

Criminal Bail Application No. 1871 of 2020 (CNR No. MHCC02-008469-2020) and F. No. NCB/MZU/CR-16/2020

### **DISPOSITION**

dismissed

### **ADVOCATES**

Ld. Adv. Mr. Satish Maneshinde for applicant/accused.

Ld. SPP Mr. Sarpande for NCB.

### **JUDGES**

G.B. Gurao, J.

G.B. Gurao, J.:— This is an application for bail by accused *Rhea Chakraborty* in F. No. **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, 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 Grams2)Ganja-270.12 Grams (In form of Buds, Pre rolled Joints, Indian weed)3)THC-3.6 Grams4)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.

7. 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 accused is an actor/model by profession. The accused has been a video-jockey on MTV *India* and thereafter appeared in Bollywood films, such as Mere Dad Ki Maruti, Sonali Cable, Half Girlfriend and Jalebi. Accused is well respected member of the society. The accused is innocent and she has not committed any crime. She is falsely implicated in the case. No narcotic drug or psychotropic substances have been seized from the accused. In this case only 59 grams of Ganja was recovered and the quantity is smaller quantity. The prosecution agency has incorrectly applied section 27-A of the NDPS Act, in view the bar, accused to release on bail section 37 of the NDPS Act. Thus Section 27- A of the NDPS Act is mechanically and without application of mind applied. Entire record do not show that accused is in any way involved with financing of illicit traffic of drug. There are no allegations against the accused and harboring of offenders as mentioned under section 27(A) of NDPS Act. The only allegations against the accused is that she has only procured drug for her late boy friend Sushant Singh Rajput in remand application dated 8/9/2020. Accused had never managed finance for drug procurement alongwith late Sushant Singh Rajput. Thus, it can not be said that accused is an active member of drug syndicate connected with drug supplies.

9. Mr. Satish Maneshinde Advocates for applicant/accused has further submitted that the NCB is silent as to the amount of finance quantum of drug and type of drug allegedly procured and financed by the accused. If the allegations are taken as it is, it would revealed that accused would co-ordinate the delivery of drug for her and then boy friend. Her alleged role if any, is purchase of smaller quantity of drug for her boy friend and then the presence case is in respect of only smaller quantity and therefore, the accused is entitled for bail.

10. He further submitted that there were similar allegations against the accused and co-accused Kaizan Ebrahim. However, NCB has not applied section 27(A) of NDPS Act to accused Kaizan Ebrahim and he was released on bail. The accused was interrogated by NCB on 6, 7 and 8 September, 2020. However, at that time no lady officer was present. Statement of accused was recorded in presence of police officer. Thus, the statement is hit by the provisions of section 25 of Evidence Act. According to him, if the entire evidence is seen, according to the prosecution, only Rs. 12,000/-

(Rs. Twelve Thousand only) has passed from her through credit cards alleging that the said amount is used for financing of drug. Merely, sale and purchase of drug does not amount as illicit traffic. There are no allegations of harboring offender against the accused. The statement of accused can not be considered as it is. Accused had filed retraction before Learned Metropolitan Magistrate, Mumbai. Therefore, it can not be said that accused is involved in the present crime. According to him, Hon'ble Supreme Court in number of cases has ruled that if the custodial interrogation is not necessary then the bail should be granted and refusal of bail would amount pre-conviction of the accused.

11. Mr. Satish Maneshinde Learned Advocate for applicant/ accused has further submitted that accused is the permanent resident of given address and she is ready to abide by the conditions imposed by the Court. Her antecedents are clear. Hence, he prayed to release the accused on bail. In support of his contention he relied on;

- a) **Stefan Mueller v . State Of Maharashtra (2010) 112(7) Bom LR 2990,**
- b) **Sk. Sohil Sk. Samir v . State of Maharashtra in Criminal Bail Application No. 811 of 2018,**
- c) **Siddharam Satlingappa Mhetre v . State of Maharashtra (2011) 1 SCC 694,**
- d) **Pawan Kumar @ Monu Mittal v . State of Uttar Pradesh (SC) (2015) 3 SCC (Cri) 27,**
- e) **K.K. Ashraf v . State of Kerala, Bail Application No. 5251/2009; MANU/KE/1166/2009,**
- f) **Raju Premji v . Customs, Ner, Shillong Unit ., (SC); (2009) 16 SCC 496.**

12. As against this, Mr. Sarpande Ld. SPP for NCB/*Union of India* has submitted that all the contention raised by the accused are frivolous and false. Accused is charged with section 37- A r/ w section 29 of the NDPS Act. The punishment prescribed for the offence punishable under section 27-A is not less than 10 years and may extend to 20 years. Thus, the offence is non- bailable. According to him, admittedly initial smaller quantity of Ganja is seized from accused Abbas Lakhani and Karn Arora. However, in the investigation trail went up to accused Anuj Keshwani and the NCB officers seized Charas, Ganja and LSD from his possession. The quantity of LSD is commercial. Even to substantiate the charge under section 27-A of the NDPS Act no particular quantity of drug is required only prosecution has to show that accused has illegally financed to drug trafficking. According to him, there is ample evidence on record to show that accused is involved in illicit trafficking of drug. He has invited my attention towards remand paper as well as statement of accused. According to him, accused has specifically admitted her role in the present crime. NCB officer have seized mobile phones, Laptop of the accused persons and there is prima-facie evidence that accused has committed the offence as charged. He admitted that no contraband is seized from the accused. However, the role of the accused is

that she illegally financed to the drug trafficking.

13. Mr. Sarpande Learned SPP for NCB/*Union of India* has further submitted that if the entire record is seen carefully, then there is prima-facie evidence that accused is guilty for the offence as charged. Thus, there is bar to release the accused on bail under section 37 of NDPS Act 1985. He further submitted that the investigation is at preliminary stage, if the accused is released on bail then she will alert to other persons who are involved in the crime. He prayed to reject the application.

14. As per section 37 of NDPS Act 1985 every offence 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 v . 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.P.C. 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."

15. Accused has come with a specific case that no contraband was seized from her possession and the allegations that she procured drug for late Sushant Singh Rajput. The quantity of the said drug (Ganja) is small quantity and at the most, accused can be convicted for one year and thus, offence is bailable.

16. However, according to the prosecution accused is involved in illicit trafficking of drug. She has financed for drug for late Sushant Singh Rajput and therefore, she has committed an offence punishable under section 27-A of the NDPS Act.

17. According to section 27- A of the NDPS Act, whoever indulges in financing, directly or indirectly any of the activities specified in sub-clauses (I) to (v ) or clause (viii a) 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. Section 2 (viii b) of illicit traffic in relation to narcotic drugs and psychotropic substances, 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, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into *India* , export from *India* or transshipment, of narcotic drugs or psychotropic 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 to 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, there are specific allegations against the accused that she is involved in crime punishable under section 27(A) of the NDPS Act 1985. Therefore, the offence is non-bailable.

19. 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.

20. It is to be noted that statement of accused is recorded by NCB Officers on 6, 7 & 8 of September, 2020. According to the prosecution, she has revealed her role in the crime. The statement is recorded under section 67 of the NDPS Act 1985. According to Learned Advocate for accused that during the recording of statement, no lady officer was present, as per say of prosecution one API was present and thus the statement is inadmissible and hit by provision of section 25 of Evidence Act.

21. In *Raju Premji v . 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.

22. Reverting to the factual score of the present case, prosecution has given explanation that the accused had demanded police protection to come from home to NCB office and that is why one lady API was accompanied to the accused. Admittedly, statement of accused is recorded on 6, 7 & 8 September, 2020. The prosecution revealed the role of the accused on the basis of said statement and thereafter, she was arrested in the crime. Therefore, at this stage, when the investigation is at preliminary stage, it can not be said that the said statement of accused is forcefully recorded and inadmissible in evidence.

23. 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 nonbailable. In **K.K. Ashraf v . 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.

24. However, the fact of the above case are different to the facts of the present case. It is specific allegation against the accused that she 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.

25. 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.

26. 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.

27. From the record it is seen that accused and late Sushant Singh Rajput were in leaving-in relationship. It is alleged that accused procured drug for Sushant Singh Rajput by financing, them for that accused had asked her brother Showik to arrange for the drug and for them drug were arranged from the accused Zaid Vilatra and Abdel Basit. NCB had recovered WhatsApp chats and other electronic evidence. Some amount is also transferred via credit card of accused. Further, in the present crime there is recovery of commercial quantity of LSD from accused Anuj Keshwani. The investigation is at preliminary stage, therefore, from the available record, it can not be said that there are no reasonable grounds to connect the accused.

28. Thus, in the present case there is bar under section 37 of NDPS Act to release the accused on bail.

29. In addition according to the prosecution accused has taken the names of other persons. The investigation in respect of those persons is in process. If the accused is released on bail then she will alert those persons and they will destroy the evidence. There is possibility of tampering of evidence. As discussed above considering the allegations against the accused there is a bar to release the accused on bail under section 37 of NDPS Act 1985. The investigation is at preliminary stage and if the accused is released on bail then she will tamper the prosecution evidence. Hence, in such a circumstance I find that applicant/accused is not entitled for bail. Accordingly, I pass the following order.

30. Criminal Bail Application No. 1871/2020 stands rejected and disposed of accordingly.