

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1056 OF 2015

Nizamuddin Suleman Inamdar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Ganesh Gole i/b. Mr. Ritesh Ratnam, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

Mr. S.A. Bhat, API, Shivajinagar Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 31, 2015

P.C.:

1 Heard the learned Counsel for applicant and the learned APP
for State. Perused papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 30/10/2014 in
crime No. 458 of 2014 registered at Shivajinagar Police station for
offence punishable under Section 328 read with Section 34 of the
Indian Penal Code and under Section 18A, 27B, 28 of the Drugs and

Cosmetic Act, 1940. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 30th October, 2014 PSI of Shivajinagar Police Station lodged a report at the police station alleging therein that on 30th October, 2014 they had learnt from reliable sources that a person has stocked stupefacient drugs in his house and that he has indulged into the sale of those drugs illegally without holding any licence. Pursuant to the said information, raid was conducted. The applicant was found in the house. He was in possession of 50 bottles of Rexcof Cough Syrup. Investigating agency was of the opinion that consumption of the said drug beyond particular dose would make Rexcof Cough Syrup as stupefying substance. It can be used as intoxication.

4 The investigating agency had taken the applicant into custody on the same day and since then he is in custody. The statement of the accused was recorded in which he has disclosed to the police that he

had purchased the said material from Arvind Nemji Bharati, who has been enlarged on bail by this Court (Coram : Revati Mohite Dere, J) vide order dated 21st April, 2015.

5 The learned Counsel for the applicant submits that the punishment contemplated for prevention of the provisions under Drugs and Cosmetics Act would minimum 3 years. According to the learned Counsel, Section 328 of the Indian Penal Code would not be attracted in the present case, as it cannot be said that cough syrup would be stupefying substance or intoxicating substance, which can be terms as poisonous substance. In any case, there is no allegation of administration of the said substance and therefore, the applicant would be entitled to be released on bail after having undergone incarceration of about 8 months.

6 In view of the above facts and submissions advanced across the bar, the applicant deserves grant of bail.

7 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

8 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
- (iii) The applicant shall furnish his residential address where he is going to reside during the pendency of the trial, cell number, landline number and all other details, as required by the investigating agency and also inform the change, if any, to them.

(iv) After release on bail, the applicant shall report to the concerned Police Station on 6 consecutive Sundays commencing from 9/8/2015 between 10 a.m. to 1 p.m.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)