

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 604 OF 2021

Ajay Shyamlal Nasa @ Biga ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Sudeep Pasbola a/w Mr. Ayush Pasbola and Mr. Karl Rustom Khan
i/b. Mr. Sandeep Singh, Advocate for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 1st APRIL, 2021.

PER COURT:

1. The applicant was arrested on 30th September, 2020 registered in C.R. No. 514 of 2020 registered with Bandra Police Station, Mumbai for offences under Section 420 r/w Section 34 of Indian Penal Code (for short “IPC”) and Section 26 of the Control on Sale of Medicine Ordinance 2013, Sections 3, 2(c) of Essential Commodities Act, 1955 and Section 7(1)(A)(ii) of Drugs and Cosmetics Act, 1940.

2. The brief facts of the prosecution case are as follows :

3. The complainant is medical Inspector. He is employed with Food and Drugs Department. On 3rd August, 2020 secret information received by Police that one person supplying ‘Tocilizumab injection Actmera 400 mg’ which is used for cure of

Covid-19. The person is selling it for price of Rs. 1 Lakh per unit which is three times higher than the actual price. The complainant and other members of raiding party proceeded to Bandra Reclamation. Bogus customer was arranged and panchas were called. The person is supposed to arrive at about 8.00 p.m. to 8.30 p.m. for selling medicine. One person was found moving suspiciously. He was arrested. He gave his name as Azam Nasir Khan. He was found in possession of 15 Units of the drug. On inquiry it was noticed that he was not having necessary bills. He revealed name of Ajay as owner of D.K. Medicals. First Information Report (for short 'FIR') was registered. During the course of investigation, arrested accused revealed that he had received drug through Tirupati Courier Service from applicant. It was also discovered that the applicant and Shriprakash are partners of D.K. Chemicals. They had conspired with the arrested accused. The drug was sent for analysis and it was found counterfeit. On completing investigation, charge-sheet was filed.

4. The applicant has preferred an application for bail before the Sessions Court. The application was rejected by order dated 28th October, 2020. The applicant preferred another application for bail before the Sessions Court after filing of charge-sheet. The said application was rejected by order dated 16th January, 2021.

5. It is submitted that the applicant is in custody from 30th September, 2020. Investigation is completed and charge-sheet is filed. The applicant has been falsely implicated in this case. Section 328 of IPC is not attracted. The drug was not sold to any person. Section 420 of IPC is not attracted. There is no material to suggest that the applicant is involved in selling the drug at higher price. The exchange of chats between the applicant and co-accused does not prove that the applicant was the main person behind the crime. There is no evidence of involvement of the applicant. He is not involved in manufacturing the drug. There is no recovery of any drug from the shop of the applicant. There are no criminal antecedents against the applicant. The co-accused Azam Nasir Khan has been granted bail by order dated 5th September, 2020. Further custody of the applicant is not necessary.

6. Learned APP submitted that the offence is of serious nature. The co-accused was found in possession of drug. He was acting in connivance with the applicant. There is material showing the involvement of the applicant. The applicant runs the medical shop. The applicant had manufactured the drug. It was counterfeit.

7. The offences are triable by the Magistrate. The applicant is in custody from 30th September, 2020. Co-accused Azam Nasir

Khan was arrested with drug has been granted bail by the Sessions Court. Investigation is completed and the charge-sheet is filed. The applicant was arrested on the basis of the statement of the co-accused. Further detention of the applicant is not necessary. It is not reported that there are criminal antecedents against the applicant. Hence, bail can be granted on certain terms and conditions.

ORDER

- (i) Criminal Bail Application No. 604 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 514 of 2020 registered with Bandra Police Station, Mumbai which was subsequently investigated by CBD CID Unit IX, Bandra, Mumbai vide C.R. No. 116 of 2020, on executing PR. Bond in the sum of Rs.50,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further orders;
- (iv) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.50,000/- for a period of 8 weeks in lieu of surety.
- (v) Bail Application No. 604 of 2021 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)