

Tandale

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

**CRIMINAL BAIL APPLICATION NO.1750 OF 2016  
WITH  
CRIMINAL APPLICATION (APPP) NO. 605 OF 2018  
WITH  
CRIMINAL APPLICATION (APPP) NO. 936 OF 2017**

|                                               |   |                       |
|-----------------------------------------------|---|-----------------------|
| Rajendra Jagdambaprasad Dimpri                | } |                       |
| Hindu, Aged about 48 years, Permanently       | } |                       |
| residing at Room No.8, Sunder Nagar           | } |                       |
| Apartment, Opposite Nirmiti Vihar, Vijapur,   | } |                       |
| Road, Jule, Solapur and presently in judicial | } |                       |
| custody at Thane Central Prison Thane         | } | .... Applicant.       |
|                                               | } | (Orig. Accused No.3.) |

Vs.

|                                                |   |                  |
|------------------------------------------------|---|------------------|
| The State of Maharashtra                       | } |                  |
| At the instance of Vartak Nagar Police Station | } |                  |
| vide CR. No.II-3056/2016                       | } | .... Respondent. |

**WITH  
CRIMINAL BAIL APPLICATION NO.980 OF 2017  
WITH  
CRIMINAL APPLICATION (APPP) NO. 628 OF 2019**

|                                    |   |                 |
|------------------------------------|---|-----------------|
| Babasaheb Shankar Dhotre           | } |                 |
| Age : 38 years, Occ.: Business,    | } |                 |
| R/o : Chincholikati, Taluka Mohal, | } |                 |
| District : Solapur.                | } |                 |
| present Jail - Central Jail        | } | .... Applicant. |

Vs.

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| The State of Maharashtra              | } |                 |
| (Through Vartak Nagar Police Station) | } | .... Respondent |

Mr. Taraq Sayed for Applicant in BA/1750/2016.

Mr.Hrishikesh Mundargi i/b. Mr. Madan Gupta for Applicant in BA/980/2017.

Mr. Shishir Hiray, Special P.P. a/w Mr. Ankur Pahade & Ms. Sayee Sawant a/w Mr. Amit Palkar, APP for the Respondent-State.

**CORAM : A. S. GADKARI, J.  
RESERVED ON : 18<sup>th</sup> MARCH, 2021.  
PRONOUNCED ON : 24<sup>th</sup> MARCH, 2021.**

**JUDGMENT :-**

1. These are Applications under Section 439 of the Criminal Procedure Code for bail in connection with C.R. No. II-3056 of 2016 dated 12<sup>th</sup> April 2016 registered with Vartak Nagar Police Station, Thane, under Sections 8(c), 9-A, 22, 23, 24, 25-A, 27-A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "*N.D.P.S. Act*").

2. Heard Mr. Taraq Sayed, learned counsel for the applicant Rajendra Dimpri in Bail Application No.1750 of 2016, Mr. Hrishikesh Mundargi, learned counsel for the applicant Babasaheb Dhotre in Bail Application No.980 of 2017 and Mr. Shishir Hiray, special P.P. along with Mr. Amit Palkar, learned A.P.P. for the respondent-State. Perused entire charge-sheet.

3. As per the prosecution, applicant Rajendra Dimpri is Accused No.3 and applicant Babasaheb Dhotre is Accused No.9 in the aforesaid crime.

The First Information Report dated 12<sup>th</sup> April 2016, is lodged by Shri Mahadeo K. Chabukswar, Police Constable, then attached to Anti-Narcotics Cell, Crime Branch, Thane. It is the prosecution case that, on 12<sup>th</sup> April 2016, the Officers of Anti-Narcotics Cell, Thane received confidential

information that, at about 4.30 p.m. in front of Kashinath Ghanekar Auditorium, two persons would be arriving from two white coloured Maruti Swift Cars, with 2 to 3 Kgs. of narcotic drugs namely, Ephedrine for sale in the city of Thane. After completion of necessary legal formalities a trap was laid near the scene of offence. As per the information, two white coloured Swift cars bearing Nos. MH/43/AB/8773 and MH/46/A/0310 respectively stopped near Shiv Snacks Center situated in front of Kashinath Ghanekar Auditorium, Thane between 4.30 to 4.45 p.m. Two persons alighted from those cars with bags in their hands. The informant gave necessary signal to the raiding party. The raiding party immediately accosted the said two persons. The person alighted from Maruti Swift Car No.MH/43/AB/8773 told his name as Sagar S. Povale (A-1) and the person alighted from Maruti Swift Car No. MH/46/A/0310 told his name as Mayur S. Sukhdare (A-2). The said persons were apprised of their right under Section 50 of N.D.P.S. Act and thereafter their search was taken. In the search of accused Sagar Powale (A-1) 1 kg. of white coloured crystal powder was found. In the search of accused Mayur Sukhdare (A-2) 1 kg. of white coloured crystal powder was found. The said powder was tested on the Field Testing Kit which gave result of Ephedrine. The said contraband was sealed by effecting necessary panchnama. In this brief premise, the present crime has been registered.

4. During the course of investigation, the applicant Rajendra

Dimpri was arrested on 14<sup>th</sup> April 2016 and applicant Babasaheb Dhotre was arrested on 16<sup>th</sup> May 2016. After completion of investigation prosecution till date has filed one main and four supplementary charge-sheets.

The affidavit dated 9<sup>th</sup> July 2018 filed by Shri Kishor Khairnar, Sr. Inspector of Police, A.N.C. Thane mentions that, as of today, there are 15 accused persons arrested in the present crime.

As per the last supplementary charge-sheet dated 15<sup>th</sup> March, 2017, the prosecution case in brief is that, Mr. Manoj T. Jain (A-6), Mr. Jay Mulji Mukhi (A-10), Mr. Kishorsing Rathod (A-13) and wanted accused Mr. Vicky Goswami, Smt. Mamta Kulkarni, Dr. Abdulla and his two Associates conducted a meeting in the month of January 2016 at Hotel Bliss, Mombasa, Kenya. It was decided in the said meeting that, Mr. Manoj Jain would send Ephedrine powder manufactured at his Avon Life Sciences Company to Kenya and from it Amphetamine (Ice) would be manufactured and sold in the world by wanted accused persons, namely, Mr. Vicky Goswami, Dr. Abdulla and their Associates. As per the conspiracy, Mr. Punit Shringi (A-5) and Jay Mulji Mukhi (A-10) illegally removed 125 kgs. of Ephedrine powder from Avon Life Sciences Company and through Mr. Kishorsing Rathod (A-13), send it to Narendra D. Kacha (A-8) for processing it. After the said Ephedrine powder was processed and narcotic drug was prepared from it, Mr. Kishorsing Rathod (A-13), Mr. Jay Mulji

Mukhi (A-10) and Mr. Bharat Sing Kathia (A-14) handed it over to the agent of wanted accused Mr. Vicky Goswami at Mohammed Ali Road, Mumbai. The wanted accused Vicky Goswami received the said contraband at Kenya and after that, through angadia (courier) via Mr. Jay Mukhi (A-10) send crores of rupees to Mr. Manoj Jain (A-6).

It is the further prosecution case that, under the directions of Mr. Manoj Jain (A-6), Mr. Punit Shringi (A-5) through applicant Rajendra Dimpri and accused Dhaneshvar R. Swami illegally removed Ephedrine powder from Avon Life Sciences Company. The said powder was transported by the tempo/vehicles of applicant Babasaheb Dhotre. That, the said powder was approximately 118 kgs. and it was sold to Hardeepsingh Gill (A-7) and Sushirkumar Asekannan Adidraivid (A-11) under the directions of Mr. Manoj Jain (A-6) and Shri Punit Shringi (A-5). That, arrested accused Felix Osita (A-12) and Okaya Chinnasa (A-15) manufactured 'Methamphetamine' from it and sold it in India and abroad. The said persons have received huge amounts from the sale of it.

It is the further prosecution case that, Mr. Punit Shringi (A-5) with the help of applicant Rajendra Dimpri and Dhaneshvar Swami (A-4) clandestinely removed 2 kgs. of Ephedrine powder from Avon Life Sciences Company and handed it over to Sagar Povale (A-1) and Mayur Sukhdare (A-2) for its illegal sale. It is lastly contended by the prosecution that, the arrested accused persons herein and wanted accused in the present crime

hatched a conspiracy to prepare Methamphetamine from the Ephedrine powder manufactured in Avon Life Sciences Company, Solapur and sale it throughout the world via Gujrat and for that it was transported to Kenya.

5. Mr. Mundargi, learned counsel appearing for the applicant Babasaheb Dhotre submitted that, in the house search of Mr. Dhotre, no contraband was found. He submitted that, M/s. Avon Organics Ltd. i.e. the company owned by Mr. Manoj Jain (A-6) was granted permission by the Ministry of Health and Family Welfare, Central Drugs Standard Control Organization, Government of India for manufacturing and packing, Psuedoephedrine HCI (BP/USP/EP) and Ephedrine HCI (BP/EP) by its Certificate dated 31<sup>st</sup> July 2013 and the said permission was valid till 2<sup>nd</sup> July 2016. Therefore manufacture of Ephedrine by Mr. Manoj Jain (A-6) in his company i.e. Avon Life Sciences Limited can not be termed as an illegal act per se. He submitted that, various statements of witnesses who are mainly the employees of Avon Life Sciences Company have ascribed role to applicant Babasaheb Dhotre as, aiding in transporting the Ephedrine powder under the guidance of Mr. Dimpri and nothing more. He submitted that, the applicant Babasaheb Dhotre bonafide transported the said goods and has raised a bill for his transportation charges with the Avon Company, which is still outstanding. He submitted that, it can at the most be alleged against the applicant Babasaheb Dhotre that, he provided vehicle and driver for transporting the said Ephedrine from Avon Life Science Company to

other places under the directions of co-accused. He submitted that, at the most an offence under Section 25-A read with Section 9-A of the N.D.P.S. Act can be alleged against the applicant Babasaheb Dhotre. He submitted that, Section 25-A prescribes maximum rigorous imprisonment for 10 years for an offence punishable under Section 25-A and the applicant Babasaheb Dhotre as of today has approximately undergone five years in incarceration as an under trial prisoner. He therefore prayed that, the applicant Babasahed Dhotre may be released on bail.

6. Mr. Sayed, the learned counsel appearing for applicant Rajendra Dimpri submitted that, it is not a disputed fact that, the said Avon Life Science Company was having a licence to manufacture Ephedrine granted by the concerned authority of Government of India. That the applicant Rajendra Dimpri was working as a manager in the said company and his duty was to supervise manufacturing of Ephedrine. That, the applicant was a salaried employee of the said company. He submitted that, as per the prosecution, 7 kgs. of Ephedrine was seized from the cabin of the applicant located in the company itself and 5.5 kgs. of Ephedrine was seized from his house and therefore Section 37 of the N.D.P.S. Act would not be applicable to the applicant. He further submitted that, the applicant Rajendra Dimpri has no direct link with the absconding accused persons who have international link of drug syndicate. He further submitted that, the moment contraband was seized from the possession of the applicant

Rajendra Dimpri, the allegation of conspiracy comes to an end. That, there can not be any presumption against the applicant that, he was indulging in exporting contraband out of country. He submitted that, the applicant is in custody since 14<sup>th</sup> April 2016 and has practically undergone five years of incarceration as an under trial prisoner. He therefore prayed that, the applicant Rajendra Dimpri may be released on bail.

7. Mr. Hiray, the learned special PP. pointed out various statements of the witnesses, many of them are employees of the said Avon Company, recorded by the Investigating Agency and submitted that, the applicant Rajendra Dimpri was actively involved in processing the Ephedrine powder which had turned yellow due to storage for long time, into white colour with the help of employees of the said company in its R & D. Lab and by the use of oven he got it dried. He submitted that, from the Ephedrine powder Methamphetamine was to be manufactured by the accused persons. He submitted that, as per the prosecution case, from the Ephedrine powder supplied by the applicants, co-accused Felix Osita (A-12) and Okaya Chinnasa (A-15) manufactured Methamphetamine. He submitted that, apart from the recovery at the instance of applicant Rajendra Dimpri, the prosecuting agency has seized approximately 18 tons of Ephedrine which includes the quantity transported to United States by other accused persons. He submitted that, at the instance of applicant Rajendra Dimpri, applicant Babasaheb Dhotre transported Ephedrine

powder from Avon company and delivered it to co-accused Sushirkumar Asekannan Adidraived (A-11) and Hardeepsing Gill (A-7). He submitted that, statement of co-accused Jay Mulji Mukhi (A-10) has been recorded by the learned Judicial Magistrate under Section 164 of Cr.P.C. which unfolds the entire conspiracy hatched by the accused persons herein. He therefore prayed that, the present applications may be dismissed.

8. After sieving entire material available on record, it appears that, the applicant Rajendra Dimpri either under the directions of Mr. Punit Shringi (A-5) or himself, processed certain quantity of Ephedrine in the R & D Lab of Avon Company for removing its yellow stains for making it white coloured and thereafter dried it in an oven. There is a recovery of 7 kgs. and 5.5. kgs. of Ephedrine powder from the cabin of the applicant Dimpri situated within the precincts of the factory premises and his residence respectively. As per the submissions made by the learned Special P.P. a further role is attributed to the applicant Rajendra Dimpri that, he also supplied Ephedrine powder to Sushirkumar A. Adidraived (A-11) and Hardeepsing Gill (A-7). Admittedly, Rajendra Dimpri was employed with the said Avon company as Manager and used to supervise manufacturing process of Ephedrine.

The learned special P.P. tried to persuade this Court, by relying on hearsay evidence from the statements of witnesses and confessions given by co-accused in their statements recorded under Section 27 of Evidence

Act, that Ephedrine which was recovered at the instance of applicant Rajendra Dimpri was to be converted in Methamphetamine. The said submissions can not be accepted at its threshold, as those are against the settled principles of criminal jurisprudence.

9. As far as applicant Babasaheb Dhotre is concerned, it is alleged that, he facilitated applicant Rajendra Dimpri and other co-accused in shifting out and/or transporting the said Ephedrine powder from Avon Life Sciences Company to its destination as per the direction given to him by the co-accused. Admittedly, applicant Babasaheb Dhotre was providing his vehicles to Avon Life Sciences Company for transporting its goods.

10. Serial No.4 of Schedule-A of The Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 mentions 'Ephedrine and its salts'. Section 25-A of NDPS Act provides that, 'if any person contravenes an order made under section 9-A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees'. It is to be noted here that, however, no minimum sentence is prescribed under Section 25-A of NDPS Act.

It is held by this Court in a catena of decisions that, the controlled substance is neither a narcotic drug nor a psychotropic substance and therefore, no commercial quantity or otherwise is provided for the controlled substance. It is also held that, as far as controlled substance is

concerned, there is no categorization of small or commercial quantity. It is further held in the case of *Rafael Palafox Garcia Vs. The Union of India & Another (Criminal Application No. 2015 of 2008) dated 25<sup>th</sup> September 2008*, that a controlled substance is not necessary to be used only to make narcotic or psychotropic substance but it is a versatile substance which can be used in manufacturing of various things including innocuous medicines by the pharmaceutical industry.

11. It prima facie appears that, the applicant Rajendra Dimpri was not part of the larger conspiracy hatched by Manoj T. Jain (A-6), Jay Mulji Mukhi (A-10), Kishorsing Rathod (A-13) and other absconding accused persons who as per the prosecution case are stationed abroad. It appears that, the applicant Rajendra Dimpri was acting under the directions of co-accused Punit Shringi (A-5), being employee of Avon Life Sciences Company. Applicant Babasaheb Dhotre was in the transport business and used to provide his vehicles for transporting goods to the Avon Life Sciences Company. That, the services of applicant Babasaheb Dhotre were availed by applicant Rajendra Dimpri and other accused persons for shifting Ephedrine from the factory premises to other places. It further appears from record that, Avon Life Sciences Company is still in arrears of payment of transport charges of applicant Babasaheb Dhotre.

It further prima facie appears from the material available on record that, there is no connecting link that, the Methamphetamine found

in possession of co-accuse Felix Osita (A-12) was manufactured from the Ephedrine removed by the applicant Rajendra Dimpri from the factory premises of Avon Life Sciences Company, Solapur. There is no material on record to show that, the Ephedrine which was allegedly removed from the factory premises by the applicant Rajendra Dimpri was in fact converted into Methamphetamine and the same was found in the possession of co-accused Felix Osita (A-12) and to Okaya Chinnasa (A-15). It further appears that, the recovery of Methamphetamine from co-accused Felix Osita and Okaya Chinnasa is an independent recovery of the said contraband from them.

12. The applicants are in custody for last about five years. The prosecution till date has not taken any steps to frame charge against the applicants. As noted earlier, what is alleged against the applicants is possession and transportation of Ephedrine powder respectively, which is a controlled substance.

13. In view of the above, the applicants can be released on bail.

Hence the following Order :-

- i] Applicant Rajendra Dimpri (A-3) and Applicant Babasaheb Dhotre (A-9) be released on bail in C.R. No. II-3056 of 2016 dated 12<sup>th</sup> April 2016 registered with Vartak Nagar Police Station, Thane on their furnishing PR. bond of Rs.50,000/- each with one or more separate local sureties in the like amount.
- ii] After their release from jail, the applicants shall attend

Vartak Nagar Police Station, Thane on every first Monday of the month between 10:00 am and 12:00 noon initially for a period of one year.

After end of one year, the applicants shall attend Vartak Nagar Police Station, Thane on every first Monday of the every 3<sup>rd</sup> Month between 10:00 am and 12:00 noon. The applicants thus shall attend Vartak Nagar Police Station 4 times in a year during the pendency of the trial.

iii] Applicants shall also attend all the dates before the Trial Court except on medical grounds and unless exempted by the Trial Court.

iv] Applicants shall not tamper with the evidence and/or pressurize the prosecution witnesses.

14. Applications are allowed in the aforesaid terms.

15. In view of disposal of the Bail Application No.1750 of 2016, Criminal Application Nos.605 of 2018 and 936 of 2017 filed therein, do not survive and in view of disposal of the Bail Application No.980 of 2017, Criminal Application No. 628 of 2019 filed therein, does not survive and are accordingly disposed off.

**(A.S. GADKARI, J.)**