

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO. 3447 OF 2019**

Ruksana Murtuza Shaikh

**.....Applicant**

**V/s.**

The State of Maharashtra

**....Respondent**

\* \* \* \*

Mr. Silvin Y. Kale a/w. Mr. Swagata Hazra, advocate for the Applicant.

Mrs. Sharmila Kaushik, APP for State.

PSI, Dipish Kini, Bhiwandi Police Station present.

**CORAM : SANDEEP K. SHINDE, J.**

**ORDER RESERVED ON : Friday, 19<sup>th</sup> March, 2021.**

**ORDER PRONOUNCED ON : Thursday, 25<sup>th</sup> March, 2021.**

**P.C. :**

1. Heard learned Counsel for the parties.

2. Applicant is seeking her enlargement on bail in Crime No.I-59/2019 registered with Bhiwandi City Police Station for the offences punishable under Sections 328, 273, 276, 411, 379 read with Section 34 of the Indian Penal Code, 1860 ("IPC" for short) alongwith Sections 18(K), 27(B)(2), 27(D) of the Drugs and Cosmetics Act, 1940 alongwith Sections 8 and 22 of the Narcotics and Psychotropic Substances Act, 1985 ("NDPS Act" for short) and under Section 77 of the Child Labour Act, 2005.

3. On 5<sup>th</sup> February, 2019 on secret information, residential premises of applicant and co-accused were searched, whereupon from the house of the applicant, 70 bottles each containing 100 ML of REXUS Active Cough Syrup worth Rs.8,400/- were found stored without any authority and/or license. It may be stated that, from the house of the co-accused, Parveen Firoz Shaikh, 190 bottles of REXUS active cough syrup were seized. Nevertheless,

the panchanama dated 5<sup>th</sup> February, 2019 shows, four bottles of REXUS cough syrup and 20 strips of ALKO-1 tablets were drawn as samples. Indisputably, the cough syrup bottles containing Codeine were found stored in the separate houses of the applicant and the co-accused. However, the panchanama shows, the samples were drawn from the cough syrup found stored in the house of the co-accused, Parveen. The investigation does not show that, samples were also drawn from the cough syrup bottles stored in the house of the applicant. Even otherwise, Certificate of tests or analysis by Government Analyst under Section 25(1) of the Drugs and Cosmetics Act, 1940 shows, cough syrup allegedly seized from the house of Parveen was containing Codeine Phosphate I.P. 10 MG and Chlorpheniramine Maleate IP 4 MG in each 5 ML contents of cough syrup, are within permissible limits as given in the protocol.” (emphasis supplied)

3. Learned APP has opposed the application and relied on the order dated 18<sup>th</sup> February, 2020 passed by this Court, whereby bail was denied to co-accused, Parveen Firoz Shaikh. As such, the learned APP would contend that, medicine Rexus Cough Syrup is a schedule drug and in view of the Notification dated 14<sup>th</sup> November, 1985 issued by the Central Government under the Narcotics and Psychotropic Substances Act, 1985, it is declared that certain preparations are exempted from the purview of “Manufactured Drugs”, provided the preparation contained in the narcotic drug was limited to the extent permitted under the Notification. Reliance is placed on Entry No.35 of the Notification, which reads as under :

*“Methyl morphine (commonly known as ‘Codeline’) and Ethyl morphine and their salts (including Dionine), all dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more than 100 milligrammes of the drug’ per dosage unit and*

*with a concentration of not more than 0.5 per cent in undivided preparations and which have been established in therapeutic practice.*”

(emphasis supplied)

4. Submission is that, though it is reported by the Analyser that contents of Chlorpheniramine Maleate and Codeine Phosphate, were within the permissible limits, but *prima-facie*, the material on record, does not indicate or suggest that the syrup was stored or likely to be used for therapeutic practice. This submission is made, because the applicant could not produce the authorisation and/or license to store the syrup.

5. State, may be correct that, *prima-facie*, there is no evidence to suggest that the syrup was stored for therapeutic practice, however, this fact is to be established in the trial. Moreover, in absence of evidence of the samples being drawn from the syrup bottles found in the house of the applicant and being tested, in my view, it may not be safe to rely on the Certificate of test submitted by

the Government Analyst for the simple reason that the samples which were tested, were drawn from the syrup bottles found in the house of the co-accused and not of the applicant.

6. It may also be stated that, investigation is over and chargesheet has been filed. The applicant is a woman and in custody since February, 2019. Prosecution has not brought any material on record to suggest her past involvement of in the offence of similar nature or otherwise. True that, jurisdiction to grant bail in N.D.P.S. cases is circumscribed by the provisions of Section 37 of the said Act. But, having regard to the evidence on record, I am satisfied that, there are reasonable grounds for believing that the applicant is not likely to commit offence while on bail nor likely to be convicted of such offence. In view of the facts and for the reasons stated, the application is allowed on the following terms and conditions :

**ORDER**

(i) The applicant arrested in Crime No. I-59/2019 registered at Bhiwandi City Police Station, shall be released on bail on executing P.R. bond for the sum of Rs.30,000/- (Rs. Thirty Thousand only) with one or more local sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer twice a month i.e. first and fourth Monday of each month between 11:00 to 1:00 p.m. till the charge is framed and co-operate in the investigation.

(iii) The applicant shall furnish her permanent residential address and contact number to the Investigating Officer forthwith within a week of her release from jail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The application is accordingly allowed and disposed off.

8. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

Neeta  
S.  
Sawant

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signed by  
Neeta S.  
Sawant  
Date:  
2021.03.25  
16:00:13  
+0530

**(SANDEEP K. SHINDE, J.)**