

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

BAIL APPLICATION NO.440 OF 2022

Mohasin Ahemad Kabiruddin Shaikh,  
Age 32 yrs., Occ. Labour,  
R/o House No.240/41, Lane No.9,  
Ramabai Chowk, Mithikhadi, Limbayat,  
Surat, Tq. & Dist. Surat (Gujrat State)

... Applicant

... Versus ...

The State of Maharashtra,  
Through Azadnagar Police Station,  
Tq. & Dist. Dhule.

... Respondent

...

Mr. A.D. Sonar, Advocate for the applicant

Mr. B.V. Virdhe, APP for the respondent

...

BAIL APPLICATION NO.444 OF 2022

Irfan Mohammed Hasan Ansari  
@ Munna Chor,  
Age 49 yrs., Occ. Labour,  
R/o Chandtara Chowk, Moulviganj  
Dhule, Tq. & Dist. Dhule.

... Applicant

... Versus ...

The State of Maharashtra,  
Through Azadnagar Police Station,  
Tq. & Dist. Dhule.

... **Respondent**

...

Mrs. A.N. Ansari, Advocate for the applicant

Mr. B.V. Virdhe, APP for the respondent

...

**CORAM : SMT. VIBHA KANKANWADI, J**

**RESERVED ON : 12<sup>th</sup> AUGUST, 2022.**

**PRONOUNCED ON : 14<sup>th</sup> OCTOBER, 2022**

**ORDER :**

1 Both the accused are seeking bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No.257/2021 dated 28.10.2021 registered with Azadnagar Police Station, Tq. & Dist. Dhule, for the offence punishable under Section 328, 276 of the Indian Penal Code, 1860, under Section 20, 22(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 18(c), 27(vi)(ii) of the Drugs and Cosmetics Act, 1945.

2 Heard learned Advocate Mr. A.D. Sonar for the applicant in Bail Application No.440 of 2022, learned Advocate Mrs. A.N. Ansari for the

applicant in Bail Application No.444 of 2022 and learned APP Mr. B.V. Virdhe for the respondent in both matters.

3           It has been vehemently submitted on behalf of the applicants that now the investigation is complete and charge sheet has been filed. The contents of the First Information Report as well as the charge sheet will not show that applicant Mohasin Ahemed was consciously possessing the alleged contraband tablets. It is alleged that in fact, 36816 tablets of Alprazolam were found at the house of one Pappu Ansari and each tablet contain 0.5 mg Alprazolam. Even if it is multiplied then the quantity of Alprazolam substance will not be more than 18.40 grams. Therefore, as per the prescribed standards of commercial quantity for Alprazolam is 100 grams and, therefore, it cannot be considered as commercial quantity. The ingredients of offence under Section 20, 22(B) of the Narcotic Drugs and Psychotropic Substances Act (in short, "N.D.P.S. Act") are not attracted. It is alleged that incident has taken place on 28.10.2021 at about 12.30 p.m. on the basis of information received to Police Head Constable. The mandatory provisions of Section 42 of the N.D.P.S. Act have not been followed. So also, the mandatory provisions of Section 50 of the N.D.P.S. Act are not observed. As regards the applicant Irfan Ansari @ Munna Chor is concerned it has been submitted that the applicant has been falsely implicated and it is shown that

he is involved in many criminal cases, however, many of them have been resulted in acquittal also. The provisions of Section 276 and 328 of the Indian Penal Code are not attracted at all. The applicants came to be arrested on 28.10.2021 and 29.10.2021 respectively. It will take long time to stand their trial. The applicants are ready to abide by the terms of bail.

4            Learned Advocate for the applicant Mohasin has relied on the decision in **Sunil Vasantrao Phulbande and another vs. State of Maharashtra, 2002 (3) Mh.L.J. 689**, wherein it has been held that in a charge sheet for offence under N.D.P.S. Act if it is not accompanied by Chemical Analyzer's report, then, the charge sheet is incomplete and, therefore, when such incomplete charge sheet is filed, then, such applicant would be entitled to get default bail.

4.1           Further reliance has been placed on the decision in **Lakhan Deepak Jedhe vs. The State of Maharashtra in Bail Application No.318 of 2021** with companion matter decided by this Court on 08.04.2021, wherein also it was considered by this Court that along with the charge sheet the Chemical Analyzer's report was not filed and then this Court released the applicants on bail.

4.2           Similarly in **Jignesh P. Bhanushali vs. The Intelligence Officer** in

**Bail Application No.404 of 2021** with companion matter decided by this Court on 25.01.2022 similar view was taken.

4.3 Further, in **Bharat Chaudhary vs. Union of India, 2021 SCC Online SC 1235** the Three Judge Bench of Hon'ble Supreme Court considered that the print out of WhatsApp messages cannot be treated as evidence unless it is properly proved and when the psychotropic substance was not consciously possessed, such applicant is entitled to be released on bail.

5 Per contra, the learned APP strongly opposed the applications and submitted that earlier bail applications of applicants Mohasin and Irfan, that is, Bail Application No.1609 of 2021 and Bail Application No.1503 of 2021 respectively, were rejected on 05.01.2022. Under such circumstance, these are the second bail applications. Earlier also it was considered that whether the quantity is commercial or not and in fact, accused No.3 i.e. Mohasin carries a medical shop and he has supplied the drugs. The value of the drug is Rs.88,604.10ps. The said tablets affect the brain and, therefore, those tablets are dangerous for human consumption. Accused Mohasin was having two sim numbers and the call detail record would show that he had called accused Mohd. Shaban from whom Alprazolam tablets have been seized. The accused No.3 appears to be the supplier of the psychotropic

substance. Further, both the applicants have criminal record. Accused Munna Chor is involved in 21 criminal cases in an around Dhule City Police Station area. Further, the brother of applicant Munna Chor is by name Pappu Chor is also an accused No.2. Said Pappu Chor is involved in 34 criminal cases and while taking house search 9 plastic packets alleged to be having ganja leaves were found. There is ample evidence against both the applicants and, therefore, they need not be released on bail.

6            Learned APP has relied on the order passed by this Court in respect of the bail application of co-accused i.e. Bail Application No.1503 of 2021 filed by Pappu Chor and it is held that since there is evidence against applicant, the applicant cannot be enlarged on bail.

7            At the outset, it is to be noted that now the investigation is complete and charge sheet is filed. When this Court had rejected Bail Application No.1503 of 2021 at that time the investigation was incomplete and charge sheet was yet to be filed. When the charge sheet is filed, it is to be taken as the investigation is complete and nothing is remained to be investigated. This Court in **Sunil Phulbande** (supra) was of the opinion that along with the charge sheet the C.A. report should be annexed. Note was then taken of **Sunil Fulbande** (supra) in **Lakhan Jethe** (supra), however, there

is also reference of **Rafael Palafox Gracia vs. Union of India and another, 2008 (6) AIR Bom R 709**. In that case, the view taken in **Sunil Fulbande** (supra) was not upheld in its entirety, but the facts were that the team of police officers, who had gone to seize the contraband, had a testing kit with it and then the substance that was seized was tested on the field kit. That test was positive and it was taken as *prima facie* evidence to show that the said substance was a narcotic substance. Here, perusal of the entire charge sheet would show that no such kit was taken along with it by the raiding party. What was seized were the tablets and that too it is under the original names. However, it is also to be noted that the Drugs Inspector Mr. Prashant Brahmanekar was accompanying the raiding party and it is said that he had certified that the seized medicine is “Schedule HI prescription drug” and, therefore, it is under the Narcotic Drug and Psychotropic Substance. It appears that the samples taken have been sent to Government Analyst, Food and Drugs Administration Laboratory but the report has not been submitted. In notification specifying small quantity and commercial quantity in respect of Narcotic Drugs Alprazolam is at Sr.No.178, small quantity is stated to be 5 grams and commercial quantity is said to be 100 grams. Definitely, we cannot collectively quantify the grams of each tablet to arrive at a conclusion whether it is commercial or small quantity. Quantity has to be assessed with each of it. But as on today in spite of filing charge sheet the prosecution has

not produced the C.A. report.

8 Applicants involved in another crime, would be a question, to be considered if there is evidence against them in the present case. Pappu Chor was present in the shop at the relevant time and the entire evidence with the charge sheet would show that there is sufficient compliance of the mandatory provisions. Now, as regards the present applicant Mohasin is concerned, it is to be noted that his name was not mentioned in the First Information Report and it came to be added on the basis of WhatsApp chat. Under such circumstance, the decision in **Bharat Choudhary** (supra) will have to be followed. Under such circumstance, for the facts and the reasons stated above as well as the fact that since last many days the applicants are behind the bars and it is less likely that the case would be taken up for hearing, they deserve to be released on bail. Hence, following order.

### **ORDER**

1 Both applications stand allowed.

2 Applicant viz. **Mohasin Ahemad Kabiruddin Shaikh** in Bail Application No.440 of 2022 and applicant viz. **Irfan Mohammed Hasan Ansari @ Munna Chor** in Bail Application No.444 of 2022, who have been

arrested in connection with Crime No.257/2021 dated 28.10.2021 registered with Azadnagar Police Station, Tq. & Dist. Dhule, for the offence punishable under Section 328, 276 of the Indian Penal Code, 1860, under Section 20, 22(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 18(c), 27(vi)(ii) of the Drugs and Cosmetics Act, 1945, be released on P.R. of Rs.1,00,000/- (Rupees One Lac only) each with one solvent surety in the like amount each, on following conditions :

- i) Both the applicants shall not make any attempt to influence the prosecution witnesses in any manner.
- ii) Both the applicants shall not put any obstacle in the trial and remain present on the dates fixed by the concerned Special Court and co-operate the Special Court.
- iii) Both the applicants shall deposit their passport, if any, with the concerned Special Court.
- iv) Both the applicants shall not travel abroad without prior permission of the concerned Special Court.
- v) Both the applicants shall furnish their addresses in detail and Cell Phone numbers with the concerned Special Court and concerned Police

Station to verify the same.

vi) Bail before Trial Court.

vii) It is clarified that the observations made in the above order are restricted to the decision of these applications only and the Trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

( Smt. Vibha Kankanwadi, J. )

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