

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

BAIL APPLICATION NO. 1603 OF 2022

Ajoddin Shafiddin Shaikh

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. N.L. Choudhari, Advocate for applicant

Mr. S.P. Sonpawale, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
RESERVED ON : 07th OCTOBER, 2022
PRONOUNCED ON : 12th OCTOBER, 2022**

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 77 of 2022 registered with Chalisgaon-Road Police Station, Dist. Dhule for the offences punishable under Sections 328 and 276 of the Indian Penal Code and under Sections 8 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('N.D.P.S.').

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by a Police Constable of Chalisgaon-Road Police Station on 01st April, 2022. It is averred in the F.I.R. that

Assistant Police Inspector – Sandip Patil had received an intelligence that one Akbar Jalela (co-accused) and his associate were carrying some bottles in a bag containing narcotic/psychotropic substance for illegal sale. A station diary entry in that regard was made. Permission of Superintendent of Police, Dhule was obtained for effecting the raid. The raiding party went to the given place. It was 12:00 midnight of 31st March, 2022. Two persons were seen near United Motor Garage at Shabbir Nagar. They started running after seeing the police. The police officials followed them. One of them could flee by taking advantage of the darkness. The other one was overpowered. On enquiry, he gave his name Ajoddin Shafiddin Shaikh (applicant herein) and the another, who fled away, was Akbar Jalela. The applicant was told of his right to have him searched in presence of a gazetted officer. He declined. The members of raiding party also offered him to take search of their person. He refused to take. On search of the bag in his possession, it was found to contain 40 bottles of Codeine Phosphate and Triprolibine Hydrochloride Linctus (cough syrup)(Schedule A drugs). Worth there of was Rs.5,600/-.

4. It is also the case of prosecution that on enquiry with the applicant about possession of those bottles, he informed the same belonged to Akbar Jalela (co-accused). He could not produce doctor's prescription or bill suggesting purchase of those bottles as against medical prescription. All the bottles, therefore, came to be seized under the seizure panchanama. Four

bottles thereof were taken for analysis. Assistance of officials of Food and Drugs Department of State was taken for seizure and onward process. It is the case of prosecution that unauthorised possession of Schedule H drugs is an offence under Sections 8 and 22 of the N.D.P.S. Act. On investigation, the charge-sheet has been filed.

5. Learned counsel for the applicant would submit that there is non-compliance of Section 42 and 50 of the N.D.P.S. Act. The seized bottles belong to one Akbar Jalela (co-accused). The C.A. report has not been received. According to learned counsel, the applicant is behind the bars for over six months. It will take time for commencement and conclusion of trial. He, therefore, urged for grant of the application.

6. Learned A.P.P. would, on the other hand, submit that Section 42 of the N.D.P.S. Act has been complied with. If any irregularities are there in compliance thereof, the same is a question of fact and could be decided during trial of the case. According to learned A.P.P., it was a commercial quantity. Rigours of Section 37 of the N.D.P.S. Act itself disentitles the applicant for bail. He, therefore, urged for rejection of the application.

7. Considered the submissions advanced. 40 bottles came to be seized from the bag held by the applicant. For compliance of Section 42 of the N.D.P.S. Act, there is station diary entry to indicate recording of secret

information. There are also documents to indicate that permission of Sub-Divisional Police Officer, Dhule was also solicited to effect the raid, as a consequence of receipt of secret information, the same suggests that there is material to indicate compliance of Section 42 of the N.D.P.S. Act. The accused was found in possession of 40 bottles of 100 ml. quantity each. The raid is, therefore, be an interdict of Section 37 of the N.D.P.S. Act to grant the applicant bail.

8. To ascertain whether the bottles contain contraband, C.A. report thereof has to be on record. The C.A. report has so far not been received. Perusal of the police papers indicates that none of the members of the raiding party had with him a narcotic drugs detection kit to test whether the bottles contain contraband liquid. The applicant is in jail for about six months. It will take time for commencement and conclusion of trial. In the peculiar facts and circumstances of the case, the Court is inclined to grant him bail.

9. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released on bail, in connection with Crime No. 77 of 2022 registered with Chalisgaon-Road Police Station, Dist. Dhule for the offences punishable under Sections

328 and 276 of the Indian Penal Code and under Sections 8 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('N.D.P.S.'), on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD