

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

BAIL APPLICATION NO.1080 OF 2023

Sayyad Sheru Sayyad Budan,
Age 40 years, Occu. Labour,
R/o Near Madina Masjid,
Panchsheel Nagar, Bhusawal,
Tal. Bhusawal, District Jalgaon.

... **Applicant.**

Versus

The State of Maharashtra.

... **Respondent.**

...
Advocate for Applicant : Mr. Shaikh Nasimoddin Rafiyoddin.
APP for Respondent-State : Mr. K. S. Patil.
...

CORAM : S. G. MEHARE, J.

RESERVED ON : 17.08.2023

PRONOUNCED ON : 29.08.2023

ORDER :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant seeks bail in Crime No.89 of 2021 (CCTNS No.257 of 2021, registered at Mohadi Nagar Police Station, Taluka and District Dhule, for the offences punishable under Sections 8(c), 21(c) and 29 of the N.D.P.S. Act.

3. This is the successive bail application of the applicant. Learned counsel for the applicant would submit that when his

earlier bail application was rejected, the chemical analysis reports were not available. Now, the chemical analysis reports have been received. Hence, on this facts, he can claim the bail.

4. The brief argument of the learned counsel for the applicant were that the chemical analysis report does not mention the quantitative test of the drugs. Therefore, the prosecution case is defective. He would submit that the chemical analyser was to make the quantitative test. Since there was no quantitative test, the “commercial quantity” as alleged cannot be accepted. Hence, the bar under Section 37 would not come into way.

5. To bolster his arguments, he relied upon the case of *K. K. Naushad and others Vs. Intelligence Officer, Narcotics Control Bureau, Kerala High Court, Criminal Application No.2168 of 2004, decided on 28.03.2007*. Relying on this case, he has vehemently argued that in no way it can be accepted that the quantity recovered from the applicant was commercial. Hence, he deserves bail.

6. Per contra, learned APP would submit that the brown sugar weighing 500 gram was seized and it was a commercial quantity. Since it was a mixed drug, containing Monoacetyl, Morphine along with Diazepam and Alprazolam, it need not be

weighed separately because all drugs were narcotics. Therefore, the quantitative test was not required. Hence, he does not deserve bail.

7. The Government Notification reveals that Diazepam and Alprazolam are the most prescribed benzodiazepine anxiolytics and have potential for addictive use. A small quantity of Alprazolam is 5 grams and commercial quantity is 100 grams, and that of Diazepam is 20 grams and 500 grams. A small quantity of Morphine is 5 grams and commercial quantity is 250 grams. The mixture of all above drugs weighing about 500 grams have been seized from the applicant.

8. The Kerala High Court in the case of *K. K. Naushad (cited supra)* held that the approved test should be conducted to find the actual quantity of diacetylmorphine or heroin in the samples to attract Section 21 of the N.D.P.S. Act.

9. Detail discussion has been made as regards the quantitative analysis test of the drugs. Admittedly, the drugs recovered from the applicant were the mixed drugs as discussed above. The Hon'ble Supreme Court in case of *Hira Singh and another Vs. Union of India and another ; (2020) 20 Supreme Court Cases 272* held that the conjoint reading of provisions of Sections 2(x), (xi) and (xx) would indicate that

total weight of such manufactured drug or preparation including neutral materials is required to be considered for determination of “small quantity” or “commercial quantity”. Such reading of provisions then and then only would achieve objects and purpose of the Act. It has also been held that determining whether the quantity is small quantity or commercial quantity in relation to narcotic drugs or psychotropic substances to be mixture with one or more neutral substances, the entire weight of the materials/mixtures i.e. including the weight of neutral material, held is to be considered for ascertaining whether the quantity is “small quantity” or “commercial quantity”.

10. The 500 grams of brown sugar is apparently a commercial quantity. It was a harmful drug. Therefore, Section 37 of the N.D.P.S. Act would apply in this case. In view of the recent judgments of the Hon'ble Supreme Court in *Hira Singh* and another, the Court is of the view that the case of *K. K. Naushad* and others (*cited supra*) of the Kerala High Court would not come to his aid. At the cost of repetition, it is stated that the quantitative test of the narcotic drugs is not mandatory in the case where the drugs are the materials/mixtures of various narcotic drugs.

11. For the above reasons, the Court is of the view that the applicant does not deserve bail. Hence, the bail application stands dismissed.

(S. G. MEHARE, J.)

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vmk/-