



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

BAIL APPLICATION NO.846 OF 2023

MR.IBRAHIM GAFOOR SHAIKH @ JAHANGOOR ..APPLICANT
VS.

1. THE NARCOTICS CONTROL BUREAU, NCB
2. THE STATE OF MAHARASHTRA ..RESPONDENTS

Ms. Sana Raees Khan a/w Mr. Taraq Sayad a/w Mr. Aditya Parmar,
for the Applicant.

Mr. Shreeram Shirsat, for NCB.

Ms. Rutuja Ambekar, APP for the State.

**CORAM : M. S. KARNIK, J.
DATE : OCTOBER 11, 2023**

P.C. :

1. Heard learned counsel for the applicant and learned counsel
Shri Shirsat appearing for the respondent.

2. This is an application for bail by the accused no.3. The
applicant is implicated by the respondent - Narcotics Control Bureau
(‘NCB’, for short) in connection with Special Case No. 936 of 2021 in
respect of the offence punishable under sections 8(c) read with 20(b)
(ii)A, 21(C), 22(C), 25, 27, 27A, 29, 30 and 35 Narcotic Drugs and
Psychotropic Substances Act, 1985 (hereafter ‘the NDPS Act’ for
short) registered vide C.R. No.10 of 2021.

3. The applicant was arrested on 27/01/2021. On 05/02/2021,

a team of officials of NCB, Mumbai in the presence of two independent pancha witnesses intercepted two persons namely Zaqir Hussain Abdul Rehman Shaikh @ Bablu Patriwala (accused no.1) and Sahab Ali Mulla (accused no.2). From them 20 kg (200 bottles-100 ml each) of Codeine Syrup, 460 grams of Ganja, 56 grams of Mephedrone (MD) and 2.5 grams of Charas was recovered and seized from Room No. 46, Railway Barmesali, Kurla East, Mumbai 17. The accused nos. 1 and 2 in their statements disclosed that the contraband was supplied by the present applicant.

4. It is the contention of the learned counsel for the applicant that there is no recovery of contraband from the present applicant. The applicant is arrested only on the basis of the statements of the co-accused. It is further submitted that there is no material in the form of CDR or bank transaction connecting present applicant with the co-accused from whose possession contraband is seized. Co-accused-Moin Sohail Sayyed from whose possession contraband is recovered has been enlarged on bail. It is further submitted that at the time of the raid, though Irfan Aslam Shaikh and Rehan Munnawar Ali Shaikh were also present along with the accused nos. 1 and 2, the prosecution has not implicated the said Irfan and Rehan as accused and they are made witnesses. Learned counsel for the applicant

relied upon the decision of the Hon'ble Supreme Court in the case of ¹**Tofan Singh Vs. Sate of Tamil Nadu** in support of her submission that the statement of co-accused implicating the applicant cannot be relied upon. Learned counsel for the applicant was at pains to submit that the case against the applicant is developed by the respondent on the basis of the supplementary statements of the witnesses Irfan Aslam Shaikh and Mohammad Rehan Munnwar Ali Shaikh which was recorded almost after 6 months of the raid. According to her this raises suspicion about the prosecution case.

5. Learned counsel Shri Shirsat appearing for NCB, on the other hand submitted that the applicant and his real brother accused no. 5 Javed Gafoor Shaikh are the partners in the trafficking of 20 kg of Codeine Syrup which was seized from the accused no.1. It is submitted that the applicants are the suppliers of Narcotics and that their involvement in procurement, purchase, sell, consumption and attempt to commit offence, conspiracy with others known and unknown persons which is an offence under the aforesaid provisions is discernible from the materials on record.

6. Heard. The applicant is the accused no. 3. Accused no. 5- Javed Gafoor Shaikh is the real brother of the applicant. The

1 Criminal Appeal No. 1750 of 2009 dated 29/10/2020

contraband is seized from the accused nos. 1 and 2 on 05/02/2021. On 10/02/2021, based on the disclosure of the accused no. 1 Zakir Hussain Abdul Rehman Shaikh @ Bablu Patriwala and accused no.2 – Sahab Ali Mulla , applicant's house was searched. The applicant in his statement under section 67 of the NDPS Act stated that he supplied 20 kg (200 bottles-100 ml each) of Codeine Syrup which is a commercial quantity to accused nos. 1 and 2. The quantity seized from the accused nos. 1 and 2 is thus a commercial quantity. The applicant was arrested on 10/02/2021.

7. It is the case of the respondent that the seized 20 kg of Codeine Syrup was purchased by the accused no. 5 – Javed Gafoor Shaikh who is the real brother of the applicant. Accused nos. 1 and 2 revealed that the commercial quantity was provided by the present applicant at his house located at room no. 43, near Bahujaan Pragati Mandal, near Haji Mehamood Beef Shop, Kena Market, Tata Nagar, Govandi, Mumbai on 03/02/2021 and both of them used contraband for trafficking.

8. The statement of the applicant's real brother – Iqbal Gafoor Shaikh was recorded after arrest of the present applicant. From his statement it is revealed that accused no.5- Javed started residing elsewhere with his wife after the arrest of the applicant. He states

that his brother – accused no.5 – Javed along with some of his acquaintances regularly come to the area for selling contraband ganja and Codeine Cough Syrup . It is stated by him that the accused no. 5- Javed has many customers in the area. It is further stated that the accused no. 5 Javed has spread a reign of terror in the area and nobody dares to speak against him.

9. There is a statement of the Moin Sohail Sayed recorded on 12/01/2021 that in his area, the present applicant as well as as his brother Javed are in the business of supplying contraband Codeine Syrup, Ganja and Nitrazepam. He states that even after the arrest of the applicant, his wife and some of his acquaintances are carrying on the business of selling contraband on his behalf. The witness has stated that both the brothers i.e. present applicant and the accused no. 5 have created a reign of terror in the area and they kept several dangerous weapons with which they threaten anyone speaking against them.

10. Then there is a statement of witness Irfan Aslam Shaikh who was present along with the accused nos. 1 and 2 at the time of raid. The statement is dated 02/08/2021. The primary statement of Irfan was recorded on 05/02/2021. Learned counsel for the applicant submitted that in the primary statement, the said Irfan Aslam Shaikh

did not disclose anything about the involvement of the present applicant. It is only in the supplementary statements recorded almost after 6 months that the applicant's involvement is disclosed which according to her creates doubt about the prosecution case. In the supplementary statement recorded on 02/08/2021, the said Irfan Aslam Shaikh has stated that the accused no.1 had told him that the contraband was purchased at Govandi from the applicant and the accused no. 5. Likewise, witness Mohammad Rehan Munnawar in his supplementary statement dated 01/08/2021 has stated about the involvement of the present applicant.

11. In my opinion, the delay in recording the supplementary statement at the stage of considering this bail application cannot by itself be a factor to hold in favour of the applicant. These are aspects which will have to be gone into during trial. Prima facie, the statements of these witnesses are corroborative in nature supporting the statements of the accused nos. 1 and 2 recorded after their arrest. Having regard to the statements of the independent witnesses and the materials on record, in my opinion, it is not possible for me to record the satisfaction that there are reasonable grounds for believing that the applicant is not guilty of such offence. Furthermore, having regard to the materials on record, it is also not possible for me to

express any opinion that the applicant is not likely to commit any offence while on bail. The application is rejected.

(M. S. KARNIK, J.)