

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

BAIL APPLICATION NO. 2140 OF 2022

Aruni Kapilkumar Sahagal	... Applicant
v/s.	
The State of Maharashtra	 Respondent

**WITH
BAIL APPLICATION NO. 1074 OF 2022**

Parvez Ahmed Iqbal Shaikh	... Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Taraq Sayed i/b. Mr. Sandeep S. Karnik for the Applicant in BA/2140/2022.
Mr. Rakesh Jadhav for the Applicant in BA/1074/2022.
Mr. S.M. Bhavar i/b. Mr. Dilip Shinde for the Applicant in BA/511/2022.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th APRIL, 2023.

P. C. :-

. These are the Applications under section 439 of Cr.P.C. filed by the aforesaid Applicants who are facing trial in NDPS Special Case No.784/2021 pending on the file of Special Judge, NDPS, City Civil and Sessions Court, Greater Bombay. The aforesaid case arises from C.R.No.3/2021 registered with Anti Narcotic Cell, Azad Maidan Unit, Mumbai for offences punishable under sections 8(c), 22(c) r/w. Section 29 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. Heard learned counsel for the Applicants and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. It is the case of the prosecution that on 04/01/2021, while the officers attached to Anti Narcotic Cell were on patrolling duty at Ghatkopar (West), Mumbai, they saw one person sitting with a nylon sack. The police apprehended him and it was found that he was carrying 745 bottles of cough syrup containing Codeine Phosphate. The accused no.1 was placed under arrest.

4. It is alleged that the bottles which were seized from the accused no.1 were manufactured by Bio-genetic Drugs Pvt. Ltd. and supplied to the Applicant, the proprietor of Sahgal Enterprises through the wholesale dealer – Agarwal Brothers. The case of the prosecution is that the Applicant, the proprietor of Sahgal Enterprises sold the said bottles to the co-accused – Parvez Ahmed Iqbal Shaikh (accused no.2) who in turn sold the same to the accused no.4 and the accused no.4 sold the said bottles to the accused no.1.

5. The case of the Applicant is that the said cough syrup was

manufactured by Bio-genetic Drugs Pvt. Ltd. It was supplied to Agarwal Brothers who is a wholesaler. Agarwal Brother supplied the said bottles to the Applicant, Alaksha Enterprises and Uma Medical who are also the distributors and are holding valid license for distribution.

6. It is submitted that there is no prima facie material that the bottles recovered from accused no.1 are from the consignment supplied to the Applicant. The Applicant is a distributor holding valid license. The records reveal that the Applicant is not the sole distributor. The wholesale dealer had supplied the bottles of the same batch also to two other distributors. The Investigating Agency had not recorded the statement of the proprietor and any other persons concerning the two other distributors to rule out the possibility of the bottles being procured from these two distributors.

7. The only incriminating material to implicate the Applicant – Sahgal Enterprises is the statement of Jafar Khan who had allegedly transferred an amount of Rs.13,000/- in his account at the instance of Applicant – Parvez. The statement of said Jafar Khan does not indicate that the money was transferred towards sale of cough syrup. There is no prima facie link or nexus between the transfer of money and sale of

cough syrup.

8. Having considered the material on record, there is no prima facie material to show the involvement of the Applicant – Sahgal Enterprises in selling the cough syrup to the accused no.2 – Parvez. Similarly, there is no material to show that the accused no.2 – Parvez has sold cough syrup bottles to the accused no.4. The accused no.4 who had allegedly sold the bottles to accused no.1, is already released on bail. Under the circumstances, in my considered view, these Applicants are also entitled for bail. Furthermore, the Applicants are in custody since June, 2021. Charge is not yet framed. There is no possibility of the trial being concluded in near future.

9. Considering all the above facts and circumstances, the Applications are allowed on the following terms and conditions :-

(a) The Applicant - Aruni Kapilkumar Sahagal and the Applicant - Parvez Ahmed Iqbal Shaikh who are facing trial in NDPS Special Case No.784/2021 pending on the file of Special Judge, NDPS, City Civil and Sessions Court, Greater Bombay arising out of C.R.No.3/2021 registered with Anti Narcotic Cell, Azad Maidan Unit, Mumbai are ordered to be released on cash bail in the sum of Rs.50,000/- each for a period of three weeks ;

(b) The Applicants shall, within the said period of three weeks, furnish P.R. bonds in the sum of Rs.50,000/- each with one or two solvent sureties in the like amount ;

(c) The Applicants shall report to Anti Narcotic Cell, Azad Maidan Unit, Mumbai on every 1st and 16th Day of English Calender Month between 11.00 a.m. to 02.00 p.m. until further orders ;

(d) The Applicants shall not interfere with the prosecution witnesses and shall not tamper with the evidence or attempt to influence or contact the prosecution witnesses or any person concerned with the case in any manner ;

(e) The Applicants shall keep the Trial Court informed of their current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(f) The Applicants shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

10. Both Bail Applications stand disposed of in above terms.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)