

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

BAIL APPLICATION NO.3431 OF 2022

Lokesh Devchand Jain ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Ashok Mundargi, Senior Advocate with Mr. Subir Sarkar for the Applicant.

Mr. A.A. Palkar, APP for the Respondent -State.

Mr. Sachin Palve, PSI, ANC, Ghatkopar, Mumbai.

CORAM: G.A. SANAP, J.

DATE : 19th DECEMBER, 2023.

P.C.:-

1. The Applicant, who is accused No.2 in C.R. No.99 of 2021 registered with Anti Narcotic Cell, Ghatkopar Unit, Mumbai, for the offences punishable under Sections 8(c) r/w 22(c) and 29 the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has made this bail application.

2. I have heard Mr. Ashok Mundargi, learned senior Advocate for accused No.2 and Mr. A.A. Palkar, learned APP for the Respondent-State. Perused the record and proceedings.

3. Learned senior Advocate for accused No.2 submitted that there is no iota of evidence to establish the complicity of the accused No.2 in this crime. Learned senior Advocate took me through the record and pointed out that accused No.2 has been arrested on the basis of the statement of co-accused i.e. accused No.1. The learned senior Advocate pointed out that 120 bottles of Codeine Cough Syrup were recovered from the possession of the accused No.1 when he was apprehended from the spot and 3480 bottles of Codeine Cough Syrup were recovered during the course of the investigation at the instance of accused No.1. The learned senior Advocate submitted that there is no evidence to indicate that order of the Codeine Cough Syrup bottles was placed by accused No.2. The learned senior Advocate submitted that the investigation is highly faulty and on the basis of legally inadmissible materials this accused is made to face the ordeal. The learned senior Advocate submitted that there is no material to connect accused No.2 with the seized Codeine Cough Syrup bottles. The learned senior Advocate submitted that learned Special Judge on the basis of the two crimes registered against this accused under the provisions of the Drugs and

Cosmetics Act, 1940 observed that the accused has criminal antecedents and which indicates his involvement in the crime. Learned senior Advocate submitted that the accused cannot be denied bail relying upon the rigour of Section 37 of the NDPS Act. It is submitted that the accused is ready to abide by the conditions that may be imposed by the Court.

4. Learned APP submitted that the CDR of the mobile phone with a particular sim card number used by the accused is the most important evidence to connect the accused No.2 with the commission of the crime. The learned APP submitted that accused No.2 was in contact with accused No.1 before his apprehension. The learned APP submitted that the material collected during the course of the investigation, compiled in the charge-sheet is sufficient to establish the complicity of the accused No.2 in this crime.

5. It is seen on perusal of the charge-sheet that the investigation conducted in this case is incomplete in all respect. The investigation apart from being half-hearted is faulty in many ways. The Investigating Officer did not go to the root of the matter. The

Codeine Cough Syrup bottles as per the prosecution, were delivered by M/s. S.K. Medical, Sonpat Haryana to accused No.2. The statement of the owner /proprietor of M/s. S.K. Medical has not been recorded. The Investigating Officer was required to establish the identity of the accused No.2, being instrumental in placing the order with M/s. S.K. Medicals and making payment of the booked consignment. The Codeine Cough Syrup bottles were recovered from the custody of accused No.1. There is no recovery either from the accused No.2 or at his instance. The only evidence relied upon to arrest accused No.2 is the statement of co-accused i.e. accused No.1. It is to be noted that the statement of the co-accused can be used as a clue for carrying out the investigation to go to the root of the matter and to collect the relevant materials. The Investigating Officer in this case remained content with the statement of the co-accused being the legally admissible piece of evidence against accused No.2 and that in my view appears to be the reason for not conducting further investigation on this point. The statement of the co-accused (accused No.1), implicating the accused No.2 has to be kept out of the consideration at this stage.

6. The next important piece of evidence relied upon is the CDR of the three mobile phones. Admittedly those mobiles were not in the name of accused No.2. The persons, who had purchased the sim cards with those numbers have not been traced out. During the investigation their statements have not been recorded. Without conducting any investigation on this point, the CDR is sought to be used to connect the accused No.2 with this crime. In the teeth of this evidence the learned senior Advocate submitted that the rigour of Section 37 sought to be invoked against the accused is totally misplaced. In order to invoke the rigour of Section 37 the material on record has to be taken into consideration and on the basis of the said material the Court has to see whether the prima facie complicity of the accused in the crime has been established or not. In my view at this stage on prima facie consideration of the evidence, the said evidence miserably falls short to invoke rigours of Section 37 of the NDPS Act against accused No.2. The vigour, with which the Section 37 of the NDPS Act has been invoked is totally misplaced.

7. The next ground for rejection of the bail is criminal antecedents of accused No.2. First crime under Drugs and Cosmetics

Act, 1940 was registered against accused No.2 in the year 2014. Second crime was registered in the year 2015. The learned Special Judge considered these two offences registered against the accused No.2 for rejection of his bail application. In my view the learned Judge was not right in placing sole reliance on these two crimes to reject bail. In the circumstances, I am of the view that the accused No.2 has made out a case for bail. Hence, following order:-

- (i) The bail application is allowed.
- (ii) The Applicant/accused No.2–Lokesh Devchand Jain be released on bail in C.R. No.99 of 2021 registered with Anti Narcotic Cell, Ghatkopar Unit, Mumbai, for the offences punishable under Sections 8(c) r/w 22(c) and 29 the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), on his furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties in the like amount.
- (iii) The accused No.2 shall not directly or indirectly tamper with the prosecution evidence.

- (iv) The accused No.2 shall not pressurise, threaten or induce the prosecution witnesses directly or indirectly.
- (v) The accused No.2 shall attend Anti Narcotic Cell, Ghatkopar Unit, Mumbai, as and when called by the Investigating Officer in connection with further investigation of this crime.

8. It is made clear that observations made herein above be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

9. The application stands disposed of in above terms.

(G.A. SANAP, J.)