

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

ANTICIPATORY BAIL APPLICATION NO. 3357 OF 2023

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Mohammad Amin Mohammad Harun ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Mahendra Sadhyanshiv, for the Applicant.
Smt. Ashwini Takalkar, APP for the State/Respondent.
PSI Supnar, Pawarwadi Police Station, Nashik (R), present.

CORAM: N. J. JAMADAR, J.
DATED: 1st DECEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.162 of 2023, registered with Pawarwadi Police Station, Nashik Rural, for the offences punishable under Sections 22(b) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").
3. Pursuant to an intimation, Pawarwadi Police conducted a raid behind Nayara Petrol Pump on Mumbai Agra Road. Co-accused Abdul Rahim was found carrying a bag concealing his presence in the bushes. Co-accused was apprehended and was apprised of his right to be searched in

the presence of the Magistrate or Gazetted Officer under Section 50 of the Act, 1985. Thereupon, in the personal search of the co-accused, in the bag which he was carrying, 31 bottles of Conex-C Cough Syrup of Active Pharma were found. It transpired that those cough syrups contained contraband substance. Upon further enquiry, the co-accused revealed that he had purchased those cough syrups from the applicant.

4. Apprehending arrest, the applicant approached Court of Session. By an order dated 4th November, 2023, the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant.

5. The learned Counsel for the applicant submitted that the only material against the applicant is the statement of co-accused, who was allegedly found in possession of the contraband articles. The applicant was not found in possession of any contraband article. In the circumstances, where the contraband articles have already been seized, the custodial interrogation of the applicant is not warranted to facilitate further investigation.

6. The learned APP stoutly resisted the prayer for pre-arrest bail. It was submitted that the co-accused had named the

applicant immediately after he was apprehended. Since the applicant is alleged to be the supplier of the cough syrup which contained contraband drug Codeine, the release of the applicant on bail would jeopardise the interest of effective investigation. It was further submitted that a number of crimes have been registered against the applicant. On this count as well, the applicant does not deserve the exercise of the discretion.

7. It is true the primary material against the applicant is the statement of the co-accused. It is also true that the statement of co-accused is not a substantive piece of evidence. However, at the stage of investigation, the statement made by the co-accused cannot be said to be wholly inconsequential. The Investigating Officer would be justified in looking into the statement of the co-accused for the purpose deriving leads in the investigation.

8. The nature of the accusation cannot be lost sight of. Co-accused was found in possession of 31 bottles of cough syrup containing contraband drug Codeine. Co-accused, as is evident from the panchnama, instantaneously named the applicant as the supplier. There is an element of spontaneity.

9. In cases of offences punishable under NDPS Act, 1985, which have deleterious effect on the society, if the statements of the co-accused are not taken into account, even at the stage of investigation, the investigation would reach a dead end. The purpose of controlling the narcotics trade would be defeated if the person, who is alleged to be the supplier, is not proceeded against on the premise that nothing was recovered from him and he has been named by the co-accused. Often the narcotic trade is carried out on the “need to know basis”. A person, who is found in possession of the contraband article, often does not know anybody beyond his immediate supplier. If the statement of the person, who is found in possession of the contraband article is discarded, then the Investigating Officer would not be in possession to trace the supplier.

10. For the foregoing reasons, and especially the fact that the applicant was instantaneously named as supplier of the contraband articles, I am inclined to hold that a *prima facie* case is made out against the applicant.

11. The antecedents of the applicant also dissuade the Court from exercising the discretion in favour of the

applicant. Release of the applicant on pre-arrest bail has the propensity to jeopardise the interest of effective investigation.

12. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]