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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.156 OF 2024

Pramod Arun Yeole
Age -34 years, Occ - Business
R/o Lane No. 7, Near Ekvira Mandir
Deopur, Dhule

APPLICANT

VERSUS

The State of Maharashtra
Through its Police Inspector
Mohadinagar Police Station,
Dhule, District - Dhule

RESPONDENT

.....
Mr. N. L. Chaudhari, Advocate for the applicant
Mr. A. R. Kale, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 7th MARCH, 2024
PRONOUNCED ON : 11th MARCH, 2024

ORDER :

1. By this application, filed under section 439 of the Criminal Procedure Code, applicant seeks bail in Crime No. 372 of 2023 registered with Mohadi Nagar Police Station, District - Dhule for offence punishable under Sections 328 and 276 of the Indian Penal Code and under sections 8 and 22 of the Narcotic Drugs and Psychotropic Substances Act.
2. Kishor Tarachand Patil, Police Constable, Local Crime Branch, Dhule, lodged FIR alleging that a secret information was

received that one person is possessing prohibited medicines, without licence. Accordingly, raid was effected at the house of Vikas Chaudhari and 3 boxes containing 590 bottles of Codeine Phosphate and Tripolidine Hydrochloride syrup (kodgen syrup) and stripes of tables were seized. Said medicines are used as intoxicant. Vikas Chaudhari disclosed that he has purchased 170 medicine bottles and 160 stripes of tablets from Lukesh Chaudhari, an employee working at Rinku Medical Stores, situated at Dutta Madir Square. Accordingly, the raiding party proceeded to Rinku Medical Store. Lukesh Chaudhari, who is working at applicant's Rinku Medical Store, confirmed that he sold said medicines to Vikas Chaudhari. On inquiry, he disclosed that applicant is owner of the medical shop and he knows where the intoxicating medicines are stored. Applicant disclosed that he has kept two boxes of prohibited medicines at his home. Accordingly, 120 bottles of Codeine Phosphate and Tripolidine HCL Syrup worth Rs.21,000/- are seized from the house of applicant. Applicant does not have licence to stock and sell prohibited medicines. Applicant disclosed the raiding party that said stock is purchased from Medical Representative Mukesh Ananda Patil. Applicant was arrested on the same day. His bail application is rejected by the Trial Court.

3. Heard learned advocate for applicant and learned APP for the State. Perused the papers of investigation.

4. Learned advocate for applicant submits that the raid itself is doubtful and there is non-compliance of section 42 of the NDPS Act, as the secrete information received by Investigating Officer was not reduced in writing. There is also non-compliance of section 52-A of the NDPS Act and, therefore, chances of conviction of applicant are bleak. Applicant has no criminal antecedents and, therefore, he may be released on bail. In support of his submissions, he placed reliance on ***“Simarnjit Singh V/s State of Punjab” 2023 (3) Crimes 168*** and order dated 19th July, 2023 passed by this Court in Bail Application No. 4125 of 2021.

5. Learned APP, on the other hand, strenuously opposed the application stating that commercial quantity of prohibited drugs is found with the applicant and the contraband articles are seized in the presence of gazetted officer. The information received by the Investigating Officer was forwarded, in writing, to Superintendent of Police, who has issued authorization for effecting raid. Therefore, there is compliance of section 42 of the NDPS Act. He submits that there is presumption under section 54 of the NDPS Act against the accused. He, therefore, submits that

considering section 37 of the NDPS act, the bail application may be rejected.

6. On going through the investigation papers, it appears that there is compliance of section 42 of the NDPS Act, however, perusal of the Panchanama of drawing of samples of the seized drugs shows that the prohibited drugs are seized from the house of applicant and Drug Inspector has taken 4 bottles of medicine and 20 stripes of tables for testing and analysis and sealed them in presence of Panchas.

7. Section 52 of the NDPS Act is interpreted by the Apex Court in ***“Union of India V.s Mohanlal and Another (2016) 3 SCC 379*** wherein it is held:

“16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not

in the above scheme of things arise. This is so especially when according to Section 52-A (4) of the Act, samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

8. In **“Simarnjit Singh”** (*supra*), decision of **Mohanlal** is relied and it is observed:

“Hence, the act of PW-7 of drawing samples from all the packets at the time of seizure is not in conformity with the law laid down by this Court in the case of Mohanlal. This creates a serious doubt about the prosecution’s case that substance recovered was a contraband. Hence the case of prosecution is not free from suspicion”.

9. In the case in hand, samples are drawn at the time of seizure, which is not in conformity with the law laid down in **“Mohanlal’s”** case (*supra*). Therefore, *prima facie*, this Court is of the view that applicant is successful in crossing the rider of Section 37 of the NDPS Act. Applicant has no criminal antecedents. Applicant is permanent resident of Dhule, having movable and immovable properties and has deep roots in the society. He is not likely to abscond, if released on bail. Applicant, therefore, is entitled for bail. Hence, the following order:

ORDER

- A. Bail application is allowed.
- B. Applicant Pramod Arun Yeole be released on bail in Crime No. 372 of 2023 registered with Mohadi Nagar Police Station, District - Dhule, on furnishing Personal Bond and Surety Bond of Rs. 50,000/- and one surety in the like amount.
- C. Applicant shall not indulge in similar offence. Applicant shall not tamper prosecution evidence.
- D. Till filing of the charge sheet, applicant shall attend the concerned police station on every Sunday between 10.00 a.m. and 12.00 noon.

[NITIN B. SURYAWANSHI]
JUDGE

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