



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 766 OF 2024

Saurabh Vikas Gondhalekar

...Applicant

Versus

The Director of Revenue Intelligence

...Respondent

Advocate for Applicant : Shri R.S. Deshmukh, senior counsel a/w
Kuldeep Kahalekar, Mr. M.S. Deshmukh and Mr. R. Dodiya,
advocates i/b Mr. Nilesh S. Ghanekar
Special Public Prosecutor for Respondent : Mr. Parikshit P. Dawalkar

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CORAM : SHIVKUMAR DIGE, J.
DATED : 9th SEPTEMBER, 2024.

PER COURT:-

1. The applicant is seeking regular bail in crime F. No. DRI/MZU/PURU/ENQ-46 of 2023 for the offences punishable under Sections 22, 25, 27-A, 28 and 29 of Narcotics Drugs and Psychotropic Substances Act, 1985 (for short the "NDPS" Act).

2. It is the prosecution's case that the Director of Revenue Intelligence (for short "DRI.") received the intelligence that, accused No.1 Jitesh Hihnoriya is involved in illicit manufacturing of synthetic NDPS substance Mephedrone (MD) or Meth and he is using following premises for manufacturing and storage of synthetic NDPS substances;

1) A Company premises of M/s. Geeta Chemical Industries situated at Plot No. G-42, MIDC Waluj, Dist. Chatrapati Sambhaji Nagar

2) Residential address of Mr. Jitesh Hinhoriya, residing at 19, Florenza Villas, Kanchanwadi, Aurangabad.

The DRI also received intelligence that accused No.1 Jitesh is manufacturing or storing synthetic NDPS substance at M/s Dharma, pharma, F1 Shri Ram Enclave, Aurangabad, M/s. Apex Medichem, B- 28, MIDC Paithan (for short "said Company") and M/s Sri Mahalakshmi Chemical Works, Plot No.B7, MIDC area Aurangabad. Accordingly, the searches were conducted simultaneously at all the above-mentioned premises by the DRI officers. During the search conducted at the residential premises of Jitesh Hinhoriya, 23.32 Kgs of Cocaine and 2.96 Kgs of Mephedrone, were recovered.

3. The allegations against the applicant are that he is the Managing Director of M/s Apex Medichem. The DRI team conducted search in the premises of M/s Apex Medichem on 28.10.2023 at 13:00 hrs onwards. During the search proceedings, large number of

plastic/steel drums containing liquid solvents/ chemicals/ materials were found to be available at the said premises. Number of said drums were inspected in front of RFSL officials on random basis. However, officers could not locate the suspected drum containing narcotics/psychotropic substance hence the search proceedings concluded at 19:30 hrs on the same day i.e. 28.10.2023. During the panchanma proceedings, it was observed that CCTV cameras of M/s Apex Medichem were switched off by Accused No.3 Shekhar Pagar Store Manager, after attending a phone call. Accordingly, a statement of accused No.3 Shekhar was recorded under Section 67 of the NDPS Act, 1985 on 28.10.2023 at 20:00 hrs onwards wherein, he voluntarily admitted that on 25.10.2023, a blue colour drum containing some chemical in liquid form along with some other material, had been received in M/s Apex Medichem from M/s. Vialance Pharmaceuticals Pvt Ltd, B-38, MIDC Paithan, Aurangabad. He also identified the said drum, which was lying at the back side of Plant C of M/s Apex Medichem having a label of "CH+PH Mix". Therefore, DRI team again conducted search in the premises of M/s Apex Medichem. The said drum was containing 107 Ltr. of chemical substance purported to be Mephedrone worth of R.160.00 Crores came to be seized, it is commercial quantity. The applicant has been arrested on 29.10.2023. It is alleged that the applicant was involved in abating the accused no.1 Shri Jitesh in the manufacturing and

storage of Mephedrone and also provided the raw materials and equipments for its preparation without making any proper entry or any documentation to the accused no.1 Shri Jitesh. It is alleged that after arrest of accused No.1 Jitesh, the applicant had instructed the accused No.3, Shri Shekhar to dismantle the lab set up by the accused No.1 Jitesh and bring back the articles lying there in said Company. He also instructed to switch off CCTV cameras while doing so. It is alleged that the applicant is Managing Director of said Company and being Director, he is responsible for manufacturing of Mephedrone and drum containing Mephedrone found in said Company.

4. It is the contention of Shri R.S. Deshmukh, learned senior counsel for the applicant that the applicant has been falsely implicated in this case. The allegations against the applicant are that he has provided raw materials to the accused No.1 Shri Jitesh for preparing Mephedrone. Learned senior counsel further submitted that the said Company was purchased by the applicant from the earlier owner in the year 2021. Earlier the said Company was functioning under the control of accused No.1 Shri Jitesh. As accused No.1 Shri Jitesh was expert in the medicine field, hence the applicant appointed him as consultant for the said Company. Learned senior counsel further submitted that it was decided between the applicant and accused No.1 Shri Jitesh to develop the intermediates of anti

cancer drug by setting up lab in the said Company. For that purpose a special set up was erected by accused No.1 Shri Jitesh for manufacturing of intermediates of anti cancer drug. There was correspondence between the applicant and accused No.1 Shri Jitesh about the development of intermediates of anti cancer drug. Learned senior counsel further submitted that the applicant has been implicated in this case only on the basis of statement of accused No.3 Shri Shekhar Pagar, given under Section 167 of the NDPS Act. In his statement, he has stated that the applicant had provided raw materials to accused No.1 Shri Jitesh without taking entry in the stock register of the said company. He further stated that when the accused No.1 Shri Jitesh was arrested, the applicant had directed him to switch off the CCTV camera and dismantle the Lab set up by accused No.1 Shri Jitesh and to bring the articles lying there in Apex Medichem. Learned senior counsel further submitted that the applicant was not aware about the activities done by accused No.1 Shri Jitesh. The statement of accused No.1 Shri Jitesh is recorded under section 67 of the NDPS Act. In the said statement, he has stated that though the applicant was managing director of the said company, he was not aware about the preparation of Mephedrone by him and the applicant had provided raw materials to him for development of intermediates of anti cancer drug. Learned senior counsel further submitted that if the prosecution is relying on the

statement of accused No.3 Shri Shekhar under section 67 of the NDPS Act, the prosecution should rely on the statement of accused No.1 Shri Jitesh. The prosecution cannot adopt a pick and choose policy. Learned senior counsel further submitted that the applicant's father is suffering from cancer and he is under treatment. As the cancer is life threatening and the applicant's Company is a pharmacy Company, hence, with the help of accused No.1 Shri Jitesh, he wanted to manufacture intermediates of anti cancer drug in the said Company. Learned senior counsel further submitted that the prosecution in their charge sheet has attributed specific role to the applicant stating that he was negligent and he did not give attention to the activities of accused No.1 Shri Jitesh and the accused No.1 Shri Jitesh has misused the premises of the applicant. The applicant is well educated. He has no criminal antecedents. He is behind bar for more than 10 months. Learned senior counsel further submitted that there are violations of mandatory provisions of Sections 42 and 52 of the NDPS Act. On two occasions the panchnamas were prepared by the DRI authority. In the said panchnamas, they did not find anything in the premises of said Company. The allegations against the applicant are in respect of abetment. Considering these facts, further detention of the applicant is not required and requested to allow the application.

The learned senior counsel relied on the following judgments:-

- i) Criminal appeal No. 3345 of 2023, Kuldip @ Bhondu Shivnarayan vs. State of Gujrat (Hon'ble Supreme court of India)
- ii) Criminal Appeal No. 1442 of 2024, Mustkin vs. State of Chhatisgarh (Hon'ble Supreme Court of India).
- iii) Criminal Appeal No. 3191 of 2023, Yusuf @ Asif vs. State (Hon'ble Supreme court of India).
- iv) Bail application No. 66 of 2024, Vaisakh vs. State of Kerala and another (Hon'ble High Court of Kerala at Erankulam)
- v) Criminal appeal No. 1145 of 2001, Union of India vs. Satrohan (Hon'ble Supreme Court of India).
- vi) Sarija Banu (A) Janarthani @ Janani and another vs. State through Inspector of Police, (2004) 12 SCC 266.
- vii) Criminal bail Application No. 1003 of 2021, Rahul Gokul Singh Meena vs. State of Maharashtra, decided by this Court.
- viii) Bail application No. 1589 of 2024, Jahagir Abdul Rehman Shaikh vs. State of Maharashtra, decided by this Court.
- ix) Lucky Sharma vs. State of Goa, 2023 Supreme (Bom)

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- x) Bail application No. 1127 of 2024, Sureshkumar Kisanram Bishnoi and another vs. The State of Maharashtra, decided by this court on 14.8.2024.
- xi) Bail application No. 639 of 2024, Sahil Shah Sattar Shah vs. State of Maharashtra, decided by this Court on 14.8.2024.
- xiii) Tofan Singh vs. State of Tamil Nadu AIR 2020 SC 5592.

5. It is contention of learned special public prosecutor Mr. Parikshit Dawalkar that the applicant is the Managing Director of the said company, where the DRI found a drum containing 107 liter of Mephedrone amounting to Rs.160 Crore, it is commercial quantity. Learned counsel further submitted that the applicant had provided raw materials for manufacturing of the said Mephedrone to accused No.1 Shri Jitesh. The applicant had directed accused No.3 Shri Shekhar not to take entries of those raw materials provided to accused No.1 Shri Jitesh in the stock register of the company, which shows involvement of the applicant in the crime. Learned counsel further submitted that after arrest of accused No.1 Shri Jitesh, the applicant had directed accused No.3 Shri Shekhar to dismantle the lab erected by accused No.1 Shri Jitesh and bring back the articles lying there to the applicant's company by switching off the CCTV cameras. It shows that the applicant wanted to destroy the evidence

of manufacturing of Mephedrone. Learned counsel further submitted that though the applicant is stating that he had directed the accused No.1 Shri Jitesh for development of the intermediates of anti cancer drug but there is no mutual agreement between them to establish the said fact nor he never enquired with accused No.1 Shri Jitesh whether he had received any permission from the Government for development of intermediates of anti cancer drug and Research and Development, which shows his active involvement in the crime. Learned counsel further submitted that section 35 of the NDPS Act states about the mental state of the person. In the present case, the mental state of the applicant shows his involvement in the crime and the applicant has not rebutted the said presumption. As per Section 38(2) of NDPS Act, the Managing Director of the Company is directly responsible for the offence. There is compliance of sections 42 and 52 of the NDPS Act, hence Section 37 of the NDPS Act is applicable against the applicant and requested to reject the application.

6. The learned special public prosecutor relied on the judgment in ***Mukesh Rajaram Chaudhari vs. The State of Maharashtra, MANU/MH/3934/2023.***

7. I have heard both the learned counsel. Perused the impugned order passed by the Special court and the charge sheet

produced on record. The main allegations against the applicant are that (i) He is the Managing Director of the M/s Apex Medichem, where drum containing 107 liter of Mephedrone found, which is commercial quantity. (ii) He provided raw materials to accused No.1 Shri Jitesh without making entry of it in the stock register of the company which are used for manufacturing of Mephedrone. (iii) After arrest of accused No.1 Shri Jitesh, he directed accused No.3 Shri Shekhar to dismantle the lab erected by accused No.1 Shri Jitesh in his company and he directed accused No.3 Shri Shekhar to switch off the CCTV cameras while bringing the raw materials, finished goods and installed equipments and other materials lying in the lab erected by accused No.1 Shri Jitesh back to the Apex Medichem.

8. It appears from the charge sheet that the role attributed to the applicant is abetment by providing raw materials for preparation of Mephedrone and involvement in the crime of manufacturing of Mephedrone. It appears from the charge sheet that the DRI has recorded the confessional statement of accused No.1 Shri Jitesh, the applicant and the accused No.3 Shri Shekhar under Section 67 of the NDPS Act. The prosecution is mainly relying on the statement of accused No.3 Shri Shekhar, Manager of the applicant's company. In the said statement, he has stated that the applicant was providing raw materials to accused No.1 Shri Jitesh without taking entry of it in

the stock register of the company. After arrest of accused No.1 Shri Jitesh, the applicant had instructed him to dismantle the lab erected by the accused No.1 Shri Jitesh in their company and also instructed him to switch off the CCTV cameras and bring all the articles lying there to the said company. The DRI has recorded the statement of the accused No.1 Jitesh with the permission of the Special Court in presence of the Jailer at Harsul. In the said statement, he has stated that he was consultant in the company of applicant and as per the terms with the applicant, he had to develop the intermediates of anti cancer drug R and D. He further stated that the applicant was providing raw materials for development of intermediates of anti cancer drug R and D but he was using the said raw materials for preparing the Mephedrone. He further stated that the applicant was not aware about the manufacturing of Mephedrone. He has further stated that in collusion with accused No.4 Jitendra Panchal, he was doing those activities.

9. As prosecution mainly rely on the statement of accused No.3 Shri Shekhar against the applicant, so statement of accused No.1 Shri Jitesh has to be considered. It is contention of the learned Special Public Prosecutor that the applicant was managing director of the said company. He provided raw materials to the accused No.1 Shri Jitesh without taking entries of it in stock register, in return he

has received Rs.21,00,000/- within a period of nine months. He instructed accused No.3 Shri Shekhar to dismantle the lab and bring articles lying there by switching of CCTV cameras. The applicant and accused No.1 Shri Jitesh neither has any legal documents from the competent authorities for R and D or manufacturing of intermediates of anti cancer drug nor has any agreement. All these acts of the applicant show his involvement in the crime.

10. It appears from the record that the applicant had given a letter in response to the letter of the accused No.1 Shri Jitesh for development of intermediates of anti cancer drug or oncology intermediates. By the said letter, the applicant permitted the accused No.1 Shri Jitesh to set up lab and procurement of raw materials and other activities for the said development. Prima facie, these correspondence show that there was agreement between the applicant and accused No.1 Shri Jitesh about development of Intermediates of anti cancer drug.

11. In respect of allegations about instructions given to the accused No.3, Shri Shekhar, in my view, the act of the applicant i.e. instructions given to accused No.3 Shri Shekhar to dismantle the lab erected by the accused No.1 Shri Jitesh and switching off the CCTV cameras are involvement of the applicant in manufacturing of the

Mephedrone or not is part of evidence. As observed earlier, it appears from record that there was correspondence between the applicant and the accused No.1 Shri Jitesh about development of intermediates anti cancer drug and the the allegations against the applicant are that he provided raw materials to accused No.1 Shri Jitesh without taking entry of it. It appears from the record that the accused No.1 Shri Jitesh was in-charge of the said company, where drum containing Mephedrone was found. The accused No.1 Shri Jitesh in his statement admits these facts. He admits that he had moved the said drum in the said Company. So, to prove the involvement of the applicant in the said crime, evidence is required. Mere on statement of co-accused, his role cannot be established.

12. It is the contention of learned special public prosecutor that as per Section 38(2) of the NDPS Act, the Managing Director of the company is directly responsible for the offence. In my view, Section 38 of NDPS Act provides about the role of every person of the Company. This section applies when it is proved that the offence has been committed with the consent or connivance or attributable to any neglect on the part of the Director, Manager or Secretary or other Officer of the company. In the present case, the evidence is required to prove the involvement of the applicant in the present crime that he had knowledge about the act committed by accused No.1 or there

was willful neglect on the part of the applicant.

13. It is the contention of learned Special Public Prosecutor that WhatsApp group was created by the applicant alongwith accused No.1 Shri Jitesh and accused No.3 Shri Shekhar. In the said WhatsApp group the names of the drugs were sent by the applicant to accused No.1 Shri Jitesh. In my view, sending the names of the drugs in the WhatsApp group at prima facie stage cannot be a ground to connect the applicant with the said crime. It requires evidence to establish the role of the applicant in the said crime. The applicant is well educated. He has no criminal antecedents. He has movable and immovable properties in Aurangabad. He is behind bar for more than ten months. Considering the above reasons, I am inclined to allow the bail application. I have gone through the case law cited by the learned special public prosecutor. The facts of cited case and the case in hand are different. In the present case, considering the allegations against the applicant, the evidence is needed to prove his involvement in the present crime.

14. In view of the above, I pass the following order:-

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime F. No. DRI/MZU/PURU/ENQ-46 of 2023 for the offences punishable under Sections 22, 25, 27-A, 28 and 29 of Narcotics Drugs and Psychotropic Substances Act, 1985, be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence and shall not pressurize the witnesses, in any manner.
 - b) The applicant shall surrender his passport before the trial court.

15. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced by the same and decide the trial on its own merit.

(SHIVKUMAR DIGE, J.)

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