IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.2162 OF 2023

Imran Shaikh s/o Shaikh Khaled @ Imran Bachkya,
Age 23 years, Occu.: Business,
resident of Ambikanagar, Dhule,
Tq. and Dist. Dhule. ..Applicant

Versus

The State of Maharashtra,
Through Chalisgaon Road Police Station,
Dhule, Taluka District Dhule. ..Respondent

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Mrs. A. N. Ansari, Advocate for the Applicant.
Mr. N. S. Tekale, APP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED FOR ORDER ON: 19th JANUARY, 2024
PRONOUNCED ORDER ON : 23rd JANUARY, 2024.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.161/2023 registered with Chalisgaon Road Police Station, Dist. Dhule for the offences punishable under Sections 328, 276 of the Indian Penal Code and Sections 8 and 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S., Act, 1985').

2. The investigation was set in motion on the basis of information given by Mr. Pankaj Dnyanoba Shinde, Police Officer alleging that on 12.06.2023 on the basis of the disclosure statement given by the applicant in Crime No.130/2023 registered for the offences punishable under Sections 457, 380, 34 of the Indian Penal Code, the search and seizure was carried at his home. During the said search, the certain articles which were hidden by accused were recovered. At the same time a bag

containing twelve bottles was found beneath cupboard. The label on the bottle disclosed that it was "Codeine Phosphate and Chlorpheniramine Maleate and Sodium Citrate Cough Linctus Conex-C" worth Rs.1680/-. The 4 bottles out of 12 bottles were handed over to the Drug Inspector and 8 bottles were sealed under panchanama. It is alleged that accused possessed those bottles without prescription of the Doctor or without appropriate license or permission. According to the prosecution, those bottles contained narcotic substance namely 'Codeine'. The cumilative content of the bottle was 1200 ml. The commercial quantity of the drug Codeine is 1 kg. as per Notification S.0.1055(E) dated 19.10.2001, as such, seized material is a commercial quantity. Consequently present offence came to be registered against applicant. The applicant moved an application for grant of bail before the Special Court. However, his prayer came to be rejected vide order dated 30.10.2023. Hence, this application.

3. Mrs. Ansari, learned Advocate appearing for the applicant would submit that the alleged recovery is made from the house of the applicant while he was in police custody in some other offence. The appropriate procedure for search and seizure is not followed. She would submit that the applicant has been falsely implicated in the aforesaid crime. The bottles containing the medicine namely "Codeine Phosphate and Chlorpheniramine Maleate and Sodium Citrate Cough Linctus Conex-C" has been seized, which is normally used to treat cough and upper respiratory symptoms. The Codeine is narcotic cough suppressants and Chlorpheniramine is an antihistamines. The Notification under N.D.P.S. Act, 1985 enlists Codeine as narcotic substance and the commercial quantity is 1 kg. She would submit that even assuming that 1200 ml was the quantity of the

substance, it cannot be treated as the commercial quantity of the drug "Codeine" in terms of Notification dated 19.10.2001. She would, therefore, urge that in view of the blatant violation of the provisions relating to the search and seizure prescribed under N.D.P.S. Act, 1985, the applicant deserves to be released on bail.

4. Mr. Tekale, learned APP appearing for the respondent however strongly opposes the prayer. He would submit that each bottle seized from house of the applicant was containing 100 ml liquid, which is equal to 115 grams. The total weight of the substance was 1318 grams, which is definitely commercial quantity of the narcotic substance i.e. Codeine. The offence is serious in nature. The applicant is hardened offender. As many as 20 offences have been registered against him since 2014 onward for various crimes. The release of the applicant may give rise to recurrence of the offence.

5. Having considered submissions advanced, it is apparent that the applicant was in police custody remand in connection with Crime No.130/2023. On the basis of the alleged disclosure statement made by him, the memorandum panchanama under Section 27 of the Indian Evidence Act was drawn and for the seizure of the articles as per disclosure statement of the applicant, police alongwith panch witnesses had been to the house of the applicant. It is alleged that while the applicant/accused tookout articles as per his disclosure statement, 12 bottles containing contraband liquid were found beneath cupboard and those bottles alleged to be containing the contraband labeled as "Codeine Phosphate and Chlorpheniramine Maleate and Sodium Citrate Cough Linctus Conex-C". On perusal of the charge-sheet, it appears that the panchanama is

drawn on 12.06.2023 in police station alleging that 12 bottles were recovered from the applicant and he could not explain about the prescription or the reason of his possession. The 4 bottles out of 12 were handed over to Mr. Kishor Deshmukh, Inspector of Drugs, Food and Drugs Administration Department, Dhule and 8 bottles were sealed in a bag in the presence of panchas. The content of the bottles is described as "Codeine Phosphate and Chlorpheniramine Maleate and Sodium Citrate Cough Linctus Conex-C". The inventory is drawn in presence of Magistrate. The certificate of inventory as issued by the learned Magistrate is made part of the charge-sheet, which discloses that only 8 bottles were presented before the Magistrate containing the liquid of 100 ml each. It states that 4 bottles were sent for Chemical Analysis. Apparently, the sample which were sent for Chemical Analysis were not brought to the notice of the Magistrate, whereas the remaining bottles were made part of the inventory certificate. Prima facie, procedure adopted by the Investigating Officer is fallacious. After producing the material before the Magistrate, the inventory ought to have been drawn and then the samples could have been taken out in presence of the Magistrate for sending it to Chemical Analysis. Apparently, only 8 bottles each containing 100 ml liquid were made subject matter of the inventory certificate.

6. Pertinently, there is nothing on record to show as to how the seized contraband/narcotic substance was more than 1000 grams/1kg, which is commercial quantity. The Codeine is a narcotic substance. However, what has been alleged to be recovered is liquid namely "Codeine Phosphate and Chlorpheniramine Maleate and Sodium Citrate Cough Linctus Conex-C". Apparently, the liquid contains narcotic substance to

certain extent. The exact quantity 'Codeine' contained in bottle is not specified anywhere. Although investigation is complete and charge-sheet is filed, from the contents of the charge-sheet it is difficult to find out that the quantity of the narcotic substance was more than commercial quantity as specifies under Notification dated 19.10.2001.

7. The learned APP has pointed out that there are as many as 20 offences registered against the applicant and he is habitual offender. Looking to the list of offences, what can be noticed is that the most of the offences are relating to the theft under Section 379 or trespass under Section 454 or house breaking under Section 445 of the Indian Penal Code. However, there is no similar offence.

8. On prima facie consideration of the material, it is difficult to hold that the applicant was found in possession of the contraband/narcotic substance of commercial quantity. In such cases, the dual test prescribed under Section 37 of the N.D.P.S. Act, 1985 need not be complied. The applicant is shown to be arrested in the present crime on 19.06.2023. He is behind the bar for about seven months. In that view of the matter, further detention of the applicant need not be continued. Hence, case is made out for grant of bail subject to certain conditions. Hence, the following order:

ORDER

(i) Bail Application is allowed.

(ii) The applicant, Imran Shaikh s/o Shaikh Khaled @ Imran Bachkya be released on bail in Crime No.161/2023 registered with

Chalisgaon Road Police Station, Dist. Dhule for the offences punishable under Sections 328, 276 of the Indian Penal Code and Sections 8 and 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

a. The applicant shall not tamper with the prosecution evidence in any manner.

b. The applicant shall attend each and every effective date of hearing before the Special Court.

c. The applicant shall not indulge in criminal activity.

d. The applicant shall furnish his detailed address alongwith contact numbers with concerned police station and attend police station once between 1st to 5th day of every month for the period of one year from the date of his release or till conclusion of the trial in the present case, whichever is earlier.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2023