

Sayali Upasani

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

BAIL APPLICATION NO. 824 OF 2024

Asgar Ali Ahmed Qureshi @ Mujeeb @ Billa ...Applicant

Vs.

State of Maharashtra ...Respondent

Mr. Zehra Charania with Ayaz Khan, Dilip Mishra, for
Applicant.

Mr. Babu V. Holambe Patil, APP for State-Respondent No. 1.

**SAYALI
DEEPAK
UPASANI**

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CORAM:- N. J. JAMADAR, J.

DATED:- 14th MARCH, 2024

PC:-

1) The applicant, who is arraigned in CR No. 214 of 2023 registered with Shivaji Nagar Police Station, for the offences punishable under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act, 1985"), has preferred this application to enlarge him on bail.

2) On 25th February, 2023, while Shivaji Nagar Police were on patrolling duty, a person was found moving suspiciously. He was accosted. As the police party entertained a suspicion that the person was carrying contraband articles, a notice under

Section 50 of the NDPS Act, 1985 was given to him. He was apprised of the right to be searched in the presence of a Gazetted Officer or Magistrate under section 50 of NDPS Act, 1985. As he declined to avail the said right, a search was conducted.

3) The said person, turned out to be a child in conflict with law. He was carrying a nylon bag, which contained 23 bottles of WELCYREX Chlorpheniramine Maleate and Codeine Phosphate Syrup 100 ml. WELCYREX COUGH SYRUP. Mig. Lic No. L/15/1665/MNB manufactured in India by Smilax Healthcare Pvt Ltd. The said Cough Syrup contained Codeine Phosphate. The contraband articles were seized. Upon inquiry the child in conflict with law disclosed that the said contraband article was supplied to him by two persons namely Mujeeb Kureshi @ Billa and Ayan @ Sannata and he was selling the contraband articles at the instance of those persons. The applicant came to be arrested.

4) The learned Counsel for the applicant submitted that there is no material to connect the applicant with the alleged offences. The applicant has been roped in on the basis of the statement of the child in conflict with law and since the applicant is not being tried with the said child in conflict with law, the statement

cannot be used against the applicant. Even otherwise, the applicant was not named by the child in conflict with law. There is a serious doubt as to the identity of the person, who was alleged to be the supplier and the applicant. Apart from the said statement, there is no other material to connect the applicant with the offence punishable under Section 29 of the NDPS Act, 1985.

5) The learned APP resisted the prayer for bail. It was submitted that there is a reference to the CDR between the applicant and the child in conflict with law. The said CDR is, however, not annexed to the charge-sheet.

6) I have carefully perused the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Prima facie, it appears that the applicant is sought to be roped in on the basis of the statement allegedly made by the child in conflict with law when he was apprehended along with contraband articles. The child in conflict with law had named two persons namely Mujeeb Kureshi @ Billa and Ayan @ Sannata. Prima facie there appears uncertainty in the identity of the person who was named by the child in conflict with law as the supplier. Had there been some other material to connect the applicant with crime, this uncertainty could have been

legitimately ignored at this stage, for being a matter for adjudication at the trial. However, apart from the said statement of the child in conflict with law, there does not appear to be any other material.

7) Evidently, the applicant was not found in possession of any contraband article. The applicant is sought to be roped in by invoking Section 29 of NDPS Act, 1985. Prima facie, there is no material to make out a case against the applicant.

8) In the case at hand, in the absence of prima facie material to show the complicity of the applicant, it would be difficult to accede to the submission on behalf of the prosecution that the rigour contained in Section 37 of the Act, 1985 is attracted qua the applicant.

9) In the aforesaid view of the matter, I am inclined to exercise the discretion in favour of the applicant.

10) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Asgar Ali Ahmed Qureshi @ Mujeeb @ Billa be released on bail in CR No. 214 of 2023 registered with Shivaji Nagar Police Station, for an offence punishable under Sections 22 and 29 of Narcotic Drugs and Psychotropic

Substances Act, 1985, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at the Shivaji Nagar Police Station on the first Monday of every month between 10.00 am to 12.00 noon for a period of three years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall not indulge in identical activity for which he has been arraigned in this case.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]