

Sayali Upasani

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

BAIL APPLICATION NO.- 1153 OF 2024

Gaurav D. Gandhi

... Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

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SAYALI DEEPAK
UPASANI
Date: 2024.03.20
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Mr. Ramesh Tripathi, Ms. Vaishnavi Tiwari, Ms. Kshitja C.,
Ms. Shruti Tripathi, Sagar N., Shubham Mishra i/b Ramesh
Tripathi and Associates, for Applicant.

Mr. Tanveer Khan, APP for State-Respondent

Mr. Dhananjay Marne, API, Nizampura Police Station,
Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 18th MARCH, 2024

ORDER:-

1) The applicant who is arraigned in C.R.No.71 of 2023 for the offences punishable under Sections 328, 273, 276 read with Section 34 of the Indian Penal Code, Sections 18(A), 18(a)(VI), 18(C), 27(b)(ii) and 27(d) of Drugs and Cosmetics Act and Sections 8(c), 22(b) and 29 of the Narcotic Drugs and Psychotropic

Substances Act, 1985, has preferred this application to enlarge him on bail.

2) On 23 February 2023, Nilkanth S. Khadke, attached to the Nizampura Police Station, received a confidential information that two persons were to arrive at Talavali Naka, Bhiwandi, to sell cough syrups containing narcotic substances. Bhiwandi police conducted a surveillance. At about 4.00 p.m., the applicant and co-accused Sandeep Kanojia came thereat carrying two plastic bags. As their movements appeared suspicious, they were accosted. In the search, 450 bottles of cough syrups Codirem (PX Chlorpheniramine Maleate and Codeine Phosphate Syrup) were found in possession of the co-accused. They had no licence to possess those bottles of cough syrup. Incriminating articles were seized and samples were collected. The co-accused were arrested.

3) The co-accused – Sandeep Kanojia disclosed that the said contraband was supplied by the applicant in the presence of the panchas. Thereupon the co-accused made a call to the applicant and called the applicant at Neelam Hotel, Kadodara, Dist. Surat, Gujrat. It is alleged the applicant came in a Grand Honda Car bearing No. GJ-05-RN-1875. The applicant was accosted. In the search of the car of the applicant, two boxes of CODIREM

COUGH Syrup (Px Chlorpheniramine Maleate and Codeine Phosphate Syrup) 100 ML were found. In all 300 bottles of CODIREM COUGH Syrup were recovered. The applicant came to be arrested.

4) At the outset, the learned Counsel for the applicant submitted that one of the co-accused Abdul Sattar Mohammed Iqbal Ansari, who was allegedly apprehended along with co-accused Sandeep Kanojia with contraband, was released on bail by this Court by an order dated 5th March, 2024. The applicant has been implicated on the basis of the statement of the co-accused.

5) The learned Counsel for the applicant further submitted that there is breach of the provisions contained in Section 42 of the NDPS Act, 1985. Moreover, there is a total non-compliance of mandatory provisions contained in Section 52A of the NDPS Act, 1985.

6) It was further submitted that the applicant is a qualified and registered Pharmacist and had the license to store the drugs. Attention of the Court was invited to the registration certificate issued by the State Pharmacy Counsel, Gujrat, and the GST registration certificate, which indicate that the applicant is the

proprietor of Meghana Medicals. Reliance was also placed on a copy of the bill of supply (pg. No. 161), which indicates that 300 bottles of CODIREM COUGH Syrup was purchased on 20th February, 2023.

7) The learned APP fairly submits that there is a non-compliance of Section 52A of the NDPS Act, 1985. The learned APP however submits that the applicant had not furnished any bills or invoices regarding the procurement of the drugs, which were seized from the applicant to the Investigating Officer. Therefore, the claim of the applicant that he had license to store the drugs cannot be accepted.

8) Evidently, the applicant came to be implicated on the basis of the disclosure made by co-accused Sandeep. The first seizure of 450 bottles of CODIREM COUGH Syrup was effected on 23rd February, 2023. The panchanama of the seizure of the contraband articles from the applicant indicates that on 2nd March, 2023, co-accused Sandeep made the alleged disclosure.

9) Evidently, there was an interval of time between the first seizure and recovery of the contraband articles from the possession of the applicant. It does not appear that the said

information was taken down and a copy thereof was forwarded to the immediate official superior.

10) Secondly, there is a complete non-compliance of the provisions contained in Section 52A of the NDPS Act, 1985. While releasing the co-accused Abdul Ansari, this Court had observed, inter alia, as under:-

“...15. Mr. Shirsat further urged that there is a complete non-compliance of the provisions contained in Section 52-A of the Act. The submission appears to be factually impeccable.

16. Learned APP invited the attention of the Court to the Memo forwarded to the jurisdictional Magistrate upon the seizure of the property (page 81). The said memo is of no assistance to the prosecution to show the compliance of the mandate contained in Section 52-A of the Act.

17. In the case of Yusuf @ Asif V/s. State⁷ in the backdrop of the submission that the seizure and sampling of the alleged contraband article was in violation of the mandatory provisions contained in Section 52-A(2), after examining the provisions contained in Section 52-A of the Act and the decision in the case of Union of India V/s. Mohanlal and Anr.⁸ the Supreme Court, inter alia, observed as under :

“16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated.” (emphasis supplied)

18. Prima facie, there is non-compliance of Section 52-A of the Act, 1985. In the circumstances of the case, whether for want of primary evidence, the trial may stand vitiated and there is also non-compliance of the provisions contained in Section 42, which has been held by the Supreme Court as a relevant consideration in the case of Sarija Banu (supra), the Court would be justified in drawing an inference that there are grounds to believe that the applicant may not be guilty of the offences. The court is not informed that the applicant has antecedents. Thus, the Court may also draw an inference that the applicant may not indulge in identical offences if released on bail. The twin conditions, thus, can be said to have been satisfied...”

11) In addition, there is material to indicate that the applicant is a qualified and registered Pharmacist and the seized drugs were procured under a bill of supply dated 20th February, 2023. In this view of the matter, as the co-accused has been released on bail, holding that the interdict contained in Section 37 of the NDPS Act, 1985, may not operate, the applicant also deserves the same dispensation.

12) The Court is not informed that the applicant has antecedents. The applicant has been in custody for more than a year. Trial may also take some time. Thus, I am inclined to release the applicant on bail.

13) Hence, the following order.

: O R D E R :

(i) The Application stands allowed.

(ii) The Applicant – Gaurav D. Gandhi be released on bail in C.R.No.71 of 2023 registered with Nimzapura Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Nizampura Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

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

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

Application disposed.

[N. J. JAMADAR, J.]