

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1555 OF 2024

Rahul Shravan Gaikwad .. Applicant
Versus
State of Maharashtra .. Respondent
...

Mr.Shreerat Kamath a/w Puja Yadav for the applicant.
Smt.K.T. Hiwrale, APP for State.
Mr.Nagesh Chikane, P.S.I. ANC, Ghatkopar Unit, Crime Branch,
Mumbai.

CORAM: BHARATI DANGRE, J.

DATED : 7th MAY, 2024

P.C:-

1 The applicant face accusations under Sections 8(c), 22(c) of the NDPS Act,1985 in C.R. No.35 of 2020, registered with Anti Narcotic Cell, Crime Branch, C.I.D., Mumbai. Upon the investigation being complete, charge sheet is filed and the applicant continued to be incarcerated since 27/11/2020, when it is alleged that he is found in possession of commercial quantity of Codeine Cough Syrup.

2 The learned counsel for the applicant state that this is the second application filed by the applicant, the first having been withdrawn on 2/08/2022, when this Court expressed its

disinclination to entertain the application.

In support of the application, the learned counsel would urge that there is non-compliance of Section 52A of the NDPS Act and from the date of registration of the FIR, no attempts are made to produce the contraband before the Magistrate for drawing samples in his presence.

3 Reliance is placed upon the decision of the Apex Court in case of *Union of India vs. Mohan Lal* and position of law that has being evolved through various subsequent pronouncements from time to time, where the non-compliance of Section 52A has been held to be fatal to the case of prosecution.

By relying upon these authoritative pronouncements including a latest decision of the Apex Court in case of *Mohammed Khalid and anr vs. State of Telangana in Criminal Appeal No.1610 of 2023*, where it is categorically held that non-compliance of Section 52A of the NDPS Act and not preparing an inventory and obtaining sample in the presence of the Jurisdictional Magistrate, the FSL report is nothing but a waste paper and cannot be read in evidence, and it will make the case of the prosecution doubtful.

4 In the present case, admittedly there is no compliance of Section 52A, hence, I deem it appropriate to enlarge the applicant on bail, subject to the following conditions, particularly since it is informed that he has no antecedents to his credit.

: ORDER :

- (a) Application is allowed.
- (b) Applicant Rahul Shravan Gaikwad, shall be released on bail in connection with C.R.No.35 of 2020 registered with Anti Narcotic Cell, Ghatkopar Unit, on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.
- (c) The Applicant shall mark his attendance before the concerned police station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m.
- (d) The Applicant shall attend the trial on regular basis.
- (e) 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. The applicant shall not tamper with evidence.
- (f) 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.

(SMT. BHARATI DANGRE, J.)