

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 536 OF 2024

Asif @ Batla Yunus Qureshi

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Shreerat Kamat i/b Ms. Puja Yadav, for Applicant.
- Mr. Tanveer G. Khan, APP for Respondent.

CORAM: MANISH PITALE, J.

DATE : 04th OCTOBER, 2024.

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MALANI

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P. C. :

1. Heard, Mr. Kamat, learned counsel for the applicant and Mr. Khan, learned APP for the respondent-State.

2. The applicant in the present case seeks bail, as he was arrested on 16.05.2023, in connection with First Information Report No.0310 of 2023, dated 16.05.2023, registered with Police Station Mankhurd, Mumbai, for offences under Sections 8(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The FIR in the present case was registered on a chance recovery of contraband (Codeine), contained in 23 bottles of 100 ml each of a syrup called *PHENSIREST*. The *panchanama* with regard to the seizure of the aforesaid contraband was executed on 16.05.2023 between 19:45 and 20:45 hours. Thereupon, on 22:02 hours the aforesaid FIR was registered. The

investigation was completed and charge-sheet was filed. The charges are yet to be framed.

4. The learned counsel for the applicant submits that the documents filed alongwith the charge-sheet in the present case indicate that the applicant was falsely implicated. In support of the said submission, the learned counsel for the applicant relied upon a document at page No.16 dated 16.05.2023, wherein the concerned Police Officer has stated that “charge-sheet,” alongwith the accompanying documents, was being submitted before the Sessions Court. The seizure itself being on 16.05.2023, it is alleged that that signatures of the applicant were taken on blank papers only to falsely implicate him. The learned counsel further relies upon a document at page No.41, which is the notice under Section 50 of the NDPS Act. It is submitted that, since the contraband was not recovered from the person of the applicant and it was in a box allegedly found in his possession, the contention on behalf of the applicant was not that there was non-compliance of Section 50 of the NDPS Act, that would vitiate the proceedings in the present case, but attention of this Court was invited to the fact that in the said notice, the concerned Police Officer recorded the contraband as “*Ganja*” and not Codeine, which was allegedly found in the box in possession of the applicant. It is submitted that this further fortifies the contention of the applicant that blank papers were simply got signed from him on the date he was arrested.

5. Thereupon, the learned counsel for the applicant referred to page No.53 of the application, which contained photographs of the box that was seized with the aforesaid bottles of syrup. It was sealed during the execution of the *panchanama* and it bears a label, which referred to *muddemal* number. It was submitted that initially a contention was raised that the same was bearing CR number, but on a clear colour copy provided by the learned APP, it became evident that the number mentioned on the label was that of the *muddemal*. It was submitted that the fact that the said number in a typed form was found in the label further indicates that even before the contraband was sent to the store room of the police station, which could be done after registration of the FIR, the *muddemal* number was already mentioned on the label. Reliance was placed on the judgment of the Division Bench in the case of *Babita @ Tai Mohan Shardul Vs. State of Maharashtra* (judgment and order dated 08.04.1991 passed in Criminal Appeal No.286 of 1991) and also on judgment of Single Judge of this Court in case of *Zaid Zahir Rana Vs. The State of Maharashtra* (judgment and order dated 30.10.2023 passed in Criminal Bail Application No.1486 of 2023), to contend that the *muddemal* number being type written and mentioned on the label vitiated the entire case of the investigating authority. It was further submitted that the document at page No.102 in the application, pertained to medical examination of the applicant on the date when the FIR was registered. In the said document also

the contraband was mentioned as “*Ganja*”, while the case of the investigating authority was that the applicant was found possessing the contraband “Codeine.” By relying upon the aforesaid documents, it was reiterated that this was a case of false implication and that in any case, the proceedings stood clearly vitiated, indicating that the applicant satisfied the first limb of the twin test contemplated under Section 37 of the NDPS Act. It is asserted that the applicant does not have any criminal antecedents and therefore, the second limb is also satisfied. Hence, this Court may consider enlarging the applicant on bail, particularly when he has already suffered incarceration for a period of about 1 year and 5 months.

6. On the other hand, learned APP opposed the prayer made in the present application. He submitted that the alleged discrepancies pointed out on behalf of the applicant would necessarily have to be tested at the stage of trial. It was submitted that none of the issues pointed out on behalf of the applicant demonstrate that he suffered any prejudice in the manner in which the proceedings were undertaken by the investigating authority. It was submitted that showing leniency to such accused persons would be misplaced and that it would militate against the object of the NDPS Act. It is further submitted that the *muddemal* number being mentioned on the label of the box, during the execution of the *panchnama* has to be viewed from a practical angle. It is indicated that the *muddemal* number is taken on phone during the

execution of the *panchnama*, as the proposed number can be made out from the register of the *muddemal* maintained in that regard. In any case, it was submitted that the aforesaid aspect is also a matter for trial. It was submitted that this Court may consider dismissing the application.

7. Having heard the rival submissions in the backdrop of the material on record, this Court is inclined to allow the present application. It is to be appreciated that while the object of the NDPS Act is to ensure that the nefarious activity of drug peddlers does not adversely affect the society particularly the youth, but, considering the powers vested in the investigating officers under the NDPS Act, it is necessary to ensure that the procedure followed by the officers is in terms of the rigors of the NDPS Act, to avoid a situation of innocent persons being casually made to suffer incarceration and harassment of suffering a long drawn trial. The purity of the process is equally important and hence, in that light, it would be necessary to consider the specific contention raised in the present case that the procedure was not only casually undertaken, but an element of false implication could be *prima facie* made out.

8. This Court has perused the documents specifically relied upon by the learned counsel appearing for the applicant. It is found that when the *panchanama* itself was executed on 16.05.2023, which led to registration of

the FIR on the same day at about 22:02 hours in the night, the letter at page No.16, also dated 16.05.2023, signed by the Police Officer, surprisingly refers to filing of charge-sheet alongwith documents before the concerned Court and this is a communication addressed to the applicant himself and it appears to bear his signature. The FIR having been registered on 16.05.2023, there was no question of charge-sheet alongwith documents being placed on record on the same day. This does support the contention raised on behalf of the applicant that in the present case blank papers were perhaps got signed from the applicant.

9. It is to be noted that in the notice issued under Section 50 of the NDPS Act to the applicant the contraband mentioned is “*Ganja*”, while the case of the investigating authority itself is that the applicant was found to be in possession of contraband “Codeine.” The papers pertaining to the medical examination of the applicant conducted on the very same day i.e. on 16.05.2023, again refers to the applicant having been found in possession of contraband “*Ganja*.” This aspect of the matter cannot be ignored by proceeding on an assumption that there was a casual approach adopted by the investigating authority. Even such a casual approach would have the tendency of vitiating the entire proceeding against the applicant, but, it also gives credence to the specific submission raised on behalf of the applicant that documents were simply got signed from the applicant and this could be a case

of false implication. The applicant not having any criminal antecedents is also a relevant factor in such circumstances.

10. As regards the label placed on the box containing the contraband being sealed during execution of the *panchanama* on 16.05.2023, bearing *muddemal* number, the explanation sought to be given on behalf of the investigating authority that such number is obtained on phone when the *panchanama* is being executed, as the next available serial number on the register of the *muddemal* can be jotted down during the process of execution of the *panchanama*, *prima facie* cannot be accepted. A similar contention raised in the context of the CR number being found on such a label was observed to be conceivable in an order dated 14.03.2024 passed by this Court in Bail Application No.2742 of 2023 (Zaheer Gayasuddin Shaikh Vs. State of Maharashtra & Anr.). But, the observations made in paragraph No.22 of the said judgment and order are also distinguishable, for the reason that in the said case such CR number was filled by hand in a notice that was containing blanks. In such a situation, it was observed that running crime number being obtained from the in-charge officer and filling the same could not be said to inconceivable. The distinguishing feature in the present case is that the *muddemal* number is seen as neatly typed on the label affixed when the *panchanama* was executed between 19:45 to 20:45, while the sealed box containing the contraband would have reached the store room after

registration of the FIR, which was at about 22:02 hours. Therefore, the explanation sought to be given on behalf of the investigating authority cannot be accepted.

11. In any case, a Division Bench of this Court in the case of **Babita @ Tai Mohan Shardul Vs. State of Maharashtra** (*supra*), while dealing with a similar contention observed as follows:

“7. *To explain this glaring circumstances, which makes the story of seizure wholly unreliable. P.W. 7 wanted us to believe that the crime register number was obtained telephonically before they proceeded for the raid. If the above explanation of P.W. 7 is taken to its logical conclusion it would mean that even if no recovery was made, the police station would have to record a blank entry against the serial number in question in the crime register. The other fallacy in the explanation is that if some one intended to register a cognizable case in the interregnum between the time of furnishing of the telephonic information and the successful conduct of the raid, the sequence of running numbers would not be maintainable in the crime register, a situation which cannot be envisaged.*

8. *We hasten to add that even if this explanation was considered as a plausible one there is no explanation whatsoever as to how the Muddemal number also finds its place on the labels of the samples seized, for admittedly, Muddemal numbers are given only after seized articles are*

produced in the Malkhana and relevant entry is made in the Muddemal Register.”

12. In paragraph No.8 of the said judgment quoted hereinabove, the Division Bench of this Court has clearly held that the *muddemal* number being found on the labels of samples seized was not acceptable, as such *muddemal* numbers are given to seized articles upon being produced in the *Malkhana*. The aforesaid position clearly inures to the benefit of the applicant in the present case. It is to be noted that a Single Judge of this Court in the case of **Zaid Zahir Rana Vs. The State of Maharashtra** (*supra*), followed the said judgment of the Division Bench in the context of CR numbers being found on labels put on such sealed articles. Therefore, it can be said that the *muddemal* number being mentioned in a typed format on the label during execution of the *panchnama* does create a doubt with regard to the correctness of the procedure and the purity of process adopted by the investigating authority in the present case.

13. In view of the above, this Court is of the opinion that the applicant has indeed satisfied the first limb of the stringent twin test contemplated under Section 37 of the NDPS Act. He has also satisfied the second limb thereof, as he does not have any criminal antecedents. He has already suffered incarceration for a period of about 1 year and 5 months. This Court is therefore, inclined to allow the present application.

14. In view of the above, the application is allowed in the following terms:

- A) The applicant shall be released on bail in connection with FIR No.0310 of 2023, dated 16.05.2023, registered with Police Station Mankhurd, Mumbai, on furnishing P.R. Bond of ₹ 50,000 and one or two sureties in the like amount.
- B) The applicant shall attend police station Mankhurd, Mumbai, during the pendency of the trial, on the first Monday of every month between 10:00 a.m and 12:00 noon.
- C) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. He shall attend the proceedings before the Trial Court on each and every date, except when exempted for reasons to be recorded in writing.
- D) The applicant shall surrender his passport, if any, before the Trial Court within one week of being released on bail.
- E) The applicant shall give the details of his active mobile numbers and his addresses to the Trial Court within one week of being released on bail.

F) The applicant shall not influence the victim, witnesses or any other persons concerned with the present case during the pendency of the trial.

15. In the event the applicant granted bail, violate any of the conditions recorded hereinabove, the bail granted to him would be liable to be cancelled.

16. It is made clear that the observations made hereinabove in the present order are limited to disposing of the present bail application. The Trial Court shall proceed on merits in the present case without being influenced by the observations made hereinabove.

17. The application is disposed of.

(MANISH PITALE, J.)