

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

BAIL APPLICATION NO. 2085 OF 2024

Mohd. Shahid Mohd. Anis Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Kamlesh M. Satre a/w Mr. Vikas A. Chavan and Mr. Nilesh M. Banger, for Applicant.
- Mr. Sagar R. Agarkar, APP for Respondent.
- Mr. S.D. Patil, PSI, Shivaji Nagar Police Station.

CORAM : MANISH PITALE, J.

DATE : 16th OCTOBER, 2024.

P. C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.
2. By this application, the applicant is seeking bail, as he was arrested in connection with First Information Report No.0692 of 2023, dated 07.08.2023, registered at Police Station Shivaji Nagar, Mumbai, for offences under Sections 8(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
3. The applicant was arrested on 07.08.2023, when he was found in possession of 31 bottles of PHENSIREST Cough Syrup, containing 100 ml each. The contraband in the present case is alleged to be codeine.
4. The investigation was completed and charge-sheet was filed.

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5. The learned counsel for the applicant has raised two grounds in support of the present bail application. Firstly, that the entire seizure and the *panchanama* executed on 07.08.2023, leading up to registration of the FIR, is rendered suspicious in the light of the fact that the presence of the authorized officer i.e. Police Inspector Mr. Tamboli, is doubtful at the time of seizure and *panchanama*. In that context, reliance is placed on another *panchanama* executed in the context of FIR No.0688 of 2023, registered at the very same Police Station on 07.08.2023. By referring to the *panchanama* executed in the context of the said FIR, it is highlighted that the said *panchanama* is said to have been executed between 18:00 hours to 18:35 hours, while *panchanama* in the present case started at 18:15 hours itself and continued till 19:45 hours. It is submitted that these facts clearly render the presence of the said Officer doubtful, which is an aspect that goes to the root of the matter. Secondly, it is claimed that the mandatory procedure under Section 52A of the NDPS Act, was highly belated and this aspect also ought to inure to the benefit of the applicant, considering the law laid down by the Supreme Court in the Case of *Union of India Vs. Mohanlal and another*¹.

6. The learned APP, on the other hand, has opposed both the grounds raised on behalf of the applicant. He submits that the first ground pertaining to the execution of the *panchanama* being vitiated is necessarily a

1 (2016) 3 SCC 379

matter for trial as the two *panchanamas* were executed in the very same area of Baiganwadi in Govandi, Mumbai. It would be a matter for trial to ascertain the distance between the two places where the *panchanamas* were executed. On the second ground, it was submitted that while the seizure was effected on 07.08.2023, on 05.10.2023, an application was moved before the concerned Magistrate for the mandatory procedure under Section 52A of the NDPS Act, thereby indicating that the said exercise could not be sought to be highly belated, as claimed by the applicant.

7. This Court has considered the rival submissions in the light of the material on record. The attack launched on behalf of the applicant on the very presence of the aforesaid officer at the time of execution of the *panchanama*, which led to registration of the subject FIR, has to be considered after the prosecution places evidence on record, during the course of trial. Reliance placed on the other *panchanama* executed on the very same day, proximate in point of time to the *panchanama* concerning the present case will have to be gone into after opportunities granted to the prosecution as well as the defence to lead evidence in that regard. A bare perusal of the two *panchanamas* does show that they were executed at Baiganwadi, Govandi, Mumbai, thereby *prima facie* indicating that the two places could be at close distance to each other. As to whether the officer could have traveled between the two places within a short span of time would be a matter to be gone at the stage of trial

and hence, at this stage itself, the applicant cannot claim benefit for making out a case as per the first limb of twin test contemplated under Section 37 of the NDPS Act.

8. As regards delay in carrying out the mandatory exercise under Section 52A of the NDPS Act, the record shows that while the seizure was conducted on 07.08.2023, the application was moved before the Magistrate on 05.10.2023. It was indicated on behalf of the applicant that the application was delayed and it could be said to be beyond the period of 60 days. But, it appears that the application was indeed moved prior to expiry of the said period of 60 days.

9. In any case, in paragraph No.19 of the judgment of the Supreme Court in the case of **Union of India Vs. Mohanlal and another** (*supra*), the Supreme Court has noted that there is no time line specified in the Section 52A of the NDPS Act, although the exercise is expected to be completed within a reasonable period of time. As to whether in the facts of the present case, it could be said that the exercise was completed within a reasonable period of time would again have to be tested at the stage of trial.

10. In view of the above, this Court finds no merit in the application. Accordingly, the application is dismissed.

(MANISH PITALE, J.)