

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2304 OF 2024

Mohd. Rizwan Hamidullah Chaudhary ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Puja Yadav for Applicant.

Ms. Megha S. Bajoria, APP for Respondent-State.

Mr. Prakash Ghadge, PSI, Dharavi Police Station.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 02, 2024

P.C. :

. Heard Ms. Yadav, learned counsel for the applicant and Ms.Bajoria, learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 09.09.2023 in connection with FIR No.0683 of 2023 registered with Dharavi Police Station, District - Mumbai, for offences under Sections 8(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The allegation against the applicant is that he was apprehended with 15 bottles of cough syrup containing contraband *Codeine*. It is alleged that considering the contents of the 15 bottles, the contraband has to be treated as commercial quantity.

4. The learned counsel for the applicant, in support of the present application, raised the following submissions:-

- a. There is non-compliance with Section 42(1) of the NDPS Act. This vitiates the entire case of the prosecution. Reliance was placed on judgements of the Supreme Court and this Court in support of the said submission;

- b. In the pre-trap *panchanama*, initially, a generalized and vague information about a person in possession of contraband was given and while recording the seizure *panchanama*, detailed description is given by the *panchas*. This creates doubt about the very information received and the manner in which the investigating officer proceeded in the matter;
- c. The *panchanama* itself records that the bottles of cough syrup carried the label 'SCHEDULE G PRESCRIPTION DRUG CAUTION'. Reliance was placed on provisions of the Drugs and Cosmetics Rule, 1945, particularly Rule 97 thereof to submit that such admitted labels found on the bottles takes the case out of the clutches of the NDPS Act.

5. On the other hand, the learned APP submitted that all the contentions raised on behalf of the applicant would be a matter for trial. As regards the first submission, reliance was placed on document at page 40, being a communication dated 09.09.2023 addressed to the Assistant Police Commissioner, Kurla Division, Mumbai, indicating compliance with Section 42 of the NDPS Act.

6. As regards the second submission, it was submitted that the same would be a matter for trial as secret information was indeed received and merely because description given to the *panchas* is slightly more detailed, ought not to be held against the prosecution. As regards the third submission, it was submitted that the judgement of the Supreme Court in the case of *Hira Singh and another Vs. Union of India and another*, (2020) 20 SCC 272 is a complete answer.

7. This Court has considered the rival submissions. As regards the first contention raised on behalf of the applicant and the reliance placed

on judgement of the Supreme Court in the case of *Boota Singh and others Vs. State of Haryana* (judgement and order dated **16.04.2021** passed in **Criminal Appeal No.421 of 2021**) and other judgements of the Supreme Court as well as of this Court, there can be no quarrel with the proposition that complete non-compliance with Section 42 of the NDPS Act must inure to the benefit of the accused. It is to be noted that the judgements of the Supreme Court, upon which the learned counsel for the applicant has placed reliance, are the judgements that were rendered on merits in appeals that reached the Supreme Court after the concerned courts and the High Court had pronounced on the merits of the matter.

8. The judgments of this Court on which the learned counsel for the applicant has placed reliance, no doubt, pertain to the stage of considering the bail applications, but it cannot be ignored that the principle laid down by the Supreme Court clarifies the distinction between complete non-compliance and satisfactory compliance with requirements of Section 42 of the NDPS Act.

9. In the present case, considering the communication at page 40 of the bail application, this Court is satisfied that the aforesaid issue pertaining to alleged non-compliance of Section 42(1) and 42(2) of the NDPS Act is a matter for trial.

10. The communication at page 40 describes, in detail, the information that was received, which eventually led to the applicant being apprehended. The aforesaid contention is, therefore, rejected.

11. As regards the second contention, it is only to be stated to be rejected, simply for the reason that merely because there was detailed description of the individual in terms of the clothes that he was wearing at the time of the incident being given in the *panchanama*, cannot create

a serious doubt about the prosecution case. Such matters would necessarily be considered at the time of trial.

12. The third contention based on Rule 97 of the Drugs and Cosmetics Rules, 1945, is considered. In the said provision pertaining to labelling of medicines, there is a distinction made between drugs specified in Schedule G and those in Schedule H. This Court is of the opinion that the sharp distinction being sought to be drawn on behalf of the applicant to claim that all Schedule G substances or drugs would necessarily be taken out of the clutches of the provisions of the NDPS Act, cannot be accepted. The judgement of the Supreme Court in the case of **Hira Singh and another Vs. Union of India and another** (*supra*) clearly lays down that when a banned substance under the provisions of the NDPS Act is found along with neutral substance, the entire quantity is to be considered. In the present case, the prosecution alleges that the contraband *Codeine* formed part of the cough syrup of which 15 bottles were found in possession of the applicant and therefore, merely because, the printed label mentioned the words 'Schedule G', at this stage itself, cannot inure to the benefit of the applicant. In any case, the Schedule H drug warning specified in Rule 97 of the Drugs and Cosmetic Rules, 1945 is relevant for the purposes of the Drugs and Cosmetic Act and Rules framed thereunder. The labelling of medicines under the said Rules, at this stage itself, cannot inure to the benefit of the applicant and in that sense, the said contention also has to be tested at the time of the trial.

13. In view of the above, this Court finds no substance in the present application. Hence, it is dismissed.

14. However, since this Court is informed that the charge-sheet cites only nine witnesses to be examined by the prosecution in support of its case and in practical terms, fewer witnesses are always examined, the

concerned Court is directed to complete the trial as expeditiously as possible.

(MANISH PITALE, J.)

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