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

BAIL APPLICATION NO. 2312 OF 2024

Manish Avdhesh Morya ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. M. K. Kocharekar, a/w Akhilesh Singh, for the Applicant.
Mr. A. A. Naik, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 15th OCTOBER, 2024

ORDER:-

1. The applicant, who is arraigned in NDPS Special Case No.799 of 2024 arising out of CR No.944 of 2023 registered with Shivaji Nagar Police Station, Mumbai, for the offences punishable under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act. 1985, has preferred this application to enlarge him on bail.
2. On 27th October, 2023 Shivaji Nagar Police, Govandi, were on a patrolling duty. At about 9.40 p.m. Abdul Karim Abdul Hakim Shah (A1), the co-accused, was found carrying a white gunny bag on a Scooty. The movements of Abdul Karim Shah (A1) appeared suspicious. He was accosted. In the search, 200 bottles of M-COFF-CT Cough Syrup 100 ml. were found in the said gunny bag. They contained

Triprolidine Hydrochloride, and Codenie Phosphate – a Narcotic Drug. Those bottles were seized and samples were collected.

3. During the course of interrogation, it transpired that Abdul Karim Shah (A1) had procured the contraband substance from Mujibur Rehman Adbul Ajij Khan (A2). Thereupon Mujibur Khan (A2) came to be arrested. Mujibur Khan (A2) made a disclosure leading to recovery of 1400 bottles of M-COFF-CT Cough Syrups. Those bottles, containing contraband substance Codeine, were also seized and samples were collected. It further transpired that the Mujibur Khan (A2) had procured the contraband substance from the applicant.

4. On 1st November, 2023 the applicant came to be arrested. The applicant also made a discovery to point out the place where the applicant used to deliver the contraband substance to Sahil Shaikh (A5) and Bablu Shaikh (A6). However, no incriminating article could be recovered from the said place. Banking upon the conversation on WhatsApp, which the applicant allegedly had with Mujibur Khan (A2), the applicant has been arraigned for the offences punishable under Sections 22 and 29 of the NDPS Act, 1985.

5. Mr. Kocharekar, the learned Counsel for the applicant, submitted that there is no material to connect the applicant with the alleged offences. Neither any contraband substance was recovered from the possession of the applicant nor there is any other credible material to show that the applicant was privy to the alleged conspiracy to indulge in the illicit trade of narcotic drugs. The alleged WhatsApp conversation between the applicant and Mujibur Khan (A2) does not sustain the indictment against the applicant.

6. Mr. Naik, the learned APP, fairly submitted that the indictment against the applicant is primarily based on the statement of the co-accused and the record of WhatsApp conversation between the applicant and Mujibur Khan (A2). However, at this stage, the said material is sufficient to infer the complicity of the applicant. As huge quantity was found in the possession of the co-accused, the interdiction contained in Section 37 of the NDPS Act, 1985 comes into play and, therefore, the applicant does not deserve to be enlarged on bail.

7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

8. *Prima facie*, it appears that the indictment against the applicant squarely rests on the disclosure statement made by Mujibur Khan (A2). The alleged discovery made by the applicant is, *prima facie*, bereft for any evidentiary value. Nothing can be said to have been discovered pursuant to the disclosure statement made by the applicant. It is trite law that a disclosure statement made by one of the accused is not a legal piece of evidence qua non-maker co-accused. Therefore, the evidence of discovery, *prima facie*, cannot be pressed into service against the applicant.

9. This leaves the evidence of transcript of the alleged conversation between the applicant and Mujibur Khan (A2). I have perused the transcript of the conversation. In addition to the aspect of admissibility and reliability of the said transcript, *prima facie*, the co-relation between the said conversation and alleged recovery of the contraband substance does not seem to have been adequately made out. Whether the said conversation was in proximity to the recovery of the contraband substance from the possession of the co-accused, warrants consideration so as to establish the nexus between the said conversation and the alleged recovery.

10. In the absence of any other material to sustain the complicity of the applicant, CDR and the transcript of WhatsApp chat by themselves, do not constitute such material as to bear the weight of accusation of conspiracy. In any event, that would be a matter for trial.

11. In the aforesaid view of the matter, as the material on record, *prima facie*, does not sustain the charge of conspiracy qua the applicant, I find substance in the submission of Mr. Kochharekar that the interdict contained in Section 37 of the NDPS Act, 1985 may not operate. The Court is not informed that the applicant has antecedents. Therefore, the Court may draw an inference that the applicant may not indulge in identical offences, if enlarged on bail.

12. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in NDPS Special Case No.799 of 2024 arising out of CR No.944 of 2023 registered with Shivaji Nagar Police Station, Mumbai, on furnishing a P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at the

concerned police station on the first Monday of every alternate month between 10.00 am. to 12.00 noon for the period of two years or till 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 not indulge in identical activities for which he has been arraigned in this case.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]