

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2841 OF 2024**

Tabrez Abdul Raheman Momin	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. F. N. Momin for applicant.

Mr. Bapu V. Holambe-Patil, APP for respondent-State.

Mr. Mangesh K. Sangale, PSI, Bhiwandi City Police Station, District Thane City.

CORAM : MANISH PITALE, J.

DATE : 26th AUGUST, 2024

P.C. :

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is facing prosecution for offences under Sections 328, 273 and 276 read with Section 34 of the Indian Penal Code, 1860, Sections 18(c), 27(k)(2), 27(d) and 18(a)(4) of the Drugs and Cosmetics Act, 1940 and Sections 8(c), 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The applicant alongwith the co-accused person, were alleged to have been found in possession of commercial quantity of contraband Codeine. The co-accused person is absconding, while the applicant was arrested on 26.08.2023.

4. The learned counsel for the applicant submits that a perusal of the statement of the first informant i.e. the concerned police officer itself shows that there is violation of Section 50 of the NDPS Act in the present case and further that the hut from which the contraband was allegedly recovered, cannot be linked with the applicant, as there is no documentary material to demonstrate the said fact. It is further submitted that even according to the investigating authority, the co-accused was also allegedly associated with the hut and therefore, it cannot be said that the applicant was in exclusive and conscious possession of the contraband.

5. On the other hand, the learned APP submits that the co-accused is absconding. The contraband was found in the hut, wherein the applicant was present. This is evident from the statement, which led to registration of FIR. There is no question of non-compliance with Section 50 of the NDPS Act, because the contraband was not recovered from the person of the applicant, but from the hut in which he was found. This is a case based on secret information that was received and in such circumstances, no case is made out for bail. The learned APP further informed that there are only 7 witnesses to be examined and there is no reason for this Court to consider the present bail application.

6. In order to appreciate the rival contentions, this Court has perused the FIR, particularly the statement of the informant-police officer, which led to registration of the FIR. It shows that when the raid was conducted upon the secret information being received, the applicant was found therein. He refused his personal search and thereupon, when the hut was searched in his presence, below the cot, the contraband was found in the form of 155 bottles

containing 100 ml each of cough syrup, which consisted of the contraband Codeine.

7. This is not a case of recovery of the contraband from the person of the accused i.e. the applicant. Hence, contention pertaining to Section 50 of the NDPS Act, is misplaced and it cannot be a ground for seeking bail. As regards the absence of documentary material to link the applicant with the hut, suffice it so say that since according to the investigating officer, the applicant was found in the hut from where the contraband was recovered when the search was conducted in the presence of the applicant, the aforesaid issue necessarily is a matter for trial. It is also relevant that the co-accused is absconding. This Court is not impressed with the contention raised on behalf of the applicant that in such a situation, when the co-accused was also allegedly associated with the hut, the applicant cannot be said to be in exclusive possession of the contraband found in the hut. As pointed out by the learned APP, only 7 witnesses are required to be examined.

8. In view of the above, the application is dismissed. However, the concerned Court is directed to expedite the trial.

(MANISH PITALE, J)

Priya Kambli