

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

BAIL APPLICATION NO. 3752 OF 2024

Jitendra Hiralal Gomtival

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Rajendra S. Bidkar, for Applicant.
- Mr. Bapu V. Holambe Patil, APP for Respondent – State.
- Mr. Shriraj Mali, API, Crime Branch Unit No.2, Bhiwandi.

CORAM : MANISH PITALE, J.

DATE : 28th NOVEMBER, 2024.

P. C. :

1. Heard, Mr. Bidkar, learned counsel for the applicant and Mr. Patil, learned APP for the respondent-State.

2. The applicant is seeking bail, as he was arrested on 13th December, 2023 in connection with First Information Report No.0221 of 2023, dated 22nd October, 2023, registered at Police Station Bhiowada, District Thane, for offences under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Sections 18(c), 18(a), 27(b) and 28(a) of the Drugs and Cosmetics Act, 1940.

3. The allegation in the present case is that on the date and time of the incident 4000 bottles of Cough Syrup containing contraband codeine were recovered and investigation indicated that the applicant was the supplier of such contraband. In that connection the applicant was arrested on 13th

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December, 2023 and he has remained behind bars.

4. The investigation was completed and charge-sheet was filed on 01st April, 2024. Copy of the charge-sheet has been annexed to the application.

5. The learned counsel for the applicant submits that in the present case, there is total non-compliance of Section 52A of the NDPS Act and therefore, the entire case of the prosecution can be said to be vitiated. It is further submitted that there is no document on record to indicate that the samples taken in this case by the Drugs Inspector were ever sent for chemical analysis to the authorized laboratory under the NDPS Act and Rules. On this basis, it was submitted that the applicant has made out a strong *prima facie* case in his favour and that this Court may allow the application.

6. On the other hand, the learned APP could not demonstrate from the charge-sheet and the documents filed therewith, as to whether any application was at all moved before the concerned Magistrate in terms of Section 52A of the NDPS Act.

7. This Court has perused the charge-sheet and the documents filed therewith. *Panchanama* in the present case was executed on 21st October, 2023, when the bottles containing contraband were allegedly seized. There is no reference to drawing of samples on the date when the *panchanama* was

executed. Instead, a document on record shows that on 25th October, 2023, i.e. 3 days after registration of the FIR, a Drugs Inspector took certain samples and the said communication recording details of such samples had been addressed by the Drugs Inspector to the Thane Police Commissionerate Office. There is nothing to indicate in the charge-sheet that the samples so drawn were sent for chemical analysis or that any application was moved before the concerned Magistrate under Section 52A of the NDPS Act for sampling and certification.

8. In the face of such material, this Court is satisfied that the applicant has made out a strong *prima facie* case that mandatory provision of Section 52A of the NDPS Act has not been satisfied. The mandatory nature of the said provision has been confirmed by the position of law clarified by the Supreme Court in the case of *Union of India Vs. Mohanlal & Another*¹ This Court is convinced that the present application deserves to be allowed.

9. Accordingly, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR No.90221 of 2023, dated 22nd October, 2023, registered at Police Station Bhiowada, District Thane, on furnishing PR bond of ₹ 50,000/- with one or two sureties in the like amount.

1 (2016) 3 SCC 379

- B) 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.
 - C) The applicant shall furnish the details of his active mobile numbers and his address to the Investigating Officer and the Trial Court within two weeks of being released on bail.
 - D) The applicant shall not influence the victim, witnesses or any other persons concerned with the present case, during the pendency of the trial.
10. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.
11. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.
12. The application is disposed of.

(MANISH PITALE, J.)