

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

BAIL APPLICATION NO. 3887 OF 2024

Fahim Mohammadali Karel

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Tariq Sayed a/w Ms. Ashwini Achari i/b Mr. A. Memon and Mr. Dharshit Jain, for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent.
- Mr. S.R. Sakpal, API, Kongaon Police Station

CORAM : MANISH PITALE, J.

DATE : 06th DECEMBER, 2024.

P. C. :

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

2. At the outset, the learned counsel for the applicant submits that although the correct spelling of the first name of the applicant is “Fahim,” in this application the first name is spelt as “Faeem.” The learned counsel for the applicant submits that he has personally verified the Aadhar Card of the applicant to submit that the correct spelling of the first name is Fahim and therefore, permission may be granted to make appropriate amendments at various places in the application.

3. In view of the above, leave is granted to make the aforesaid amendments to correct the spelling of the applicant at appropriate places in the application. The amendment be carried out forthwith.

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4. The applicant in the present case was arrested on 24th March, 2023, in connection with First Information Report No.0115 of 2023, dated 24th March, 2023, registered at Police Station Kongaon, District Thane City, for offences under Sections 328, 273 and 276 f the Indian Penal Code, 1860 (IPC) and Sections 18(A), 18(c)(4), 18(c), 27(g), 27(h)(ii) of the Drugs and Cosmetics Act. Subsequently, offences were registered under Sections 8(c), 21(c) 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

5. On information being received that cough syrup containing contraband codeine was being handled, action was undertaken by the Investigating Authority and the applicant alongwith other accused persons was found in possession of the aforesaid cough syrup containing contraband codeine. The *panchanama* was executed on 24th March, 2023. The investigation was completed and the charge-sheet was filed. This Court is informed that chemical analysis (CA) report tested positive and that codeine was detected in these samples.

6. The learned counsel for the applicant submits that since the mandatory exercise contemplated under Section 52A of the NDPS Act was not carried out in the present case, the entire prosecution story is vitiated and therefore, a strong *prima facie* case is made out in favour of the applicant. It is

further submitted that there are no criminal antecedents of the applicant and therefore, the twin test contemplated under Section 37 of the NDPS Act is satisfied. On this basis, it is submitted that the application may be allowed.

7. The learned APP submitted that the CA report indicates the presence of the aforesaid contraband, but after referring to the charge-sheet and the accompanying documents, it could not be demonstrated that the procedure contemplated under Section 52A of the NDPS Act had been followed.

8. In the case of *Union of India Vs. Mohanlal & Anr.*¹, particularly paragraph Nos.14 to 19 thereof, the Supreme Court has laid down, while discussing the aspect of seizure and sampling, that the exercise contemplated under Section 52A of the NDPS Act was mandatory. It is emphasized that the said procedure requiring inventory *panchanama* to be executed and samples being drawn before the Magistrate, which are duly certified, ensures the purity of the process of seizure and sampling.

9. It is evident from the documents on record that the contraband that was seized on 24th March, 2023, and samples were drawn when the *panchanama* was executed were directly forwarded on 17th April, 2023, to the concerned laboratory. This is further evident from the CA report which records the fact that the the samples of the contraband were indeed received

1 (2016) 3 SCC 379

on 17th April, 2023, although the report dated 28th February, 2024, records that contraband codeine was found in the samples.

10. Since the aforesaid mandatory exercise was not carried out, *prima facie*, it can be said that the entire prosecution case can be said to be vitiated and this indicates a strong *prima facie* case in favour of the applicant. The first limb of the stringent twin test contemplated under Section 37 of the NDPS is duly satisfied and second limb is also satisfied, for the reason that there is nothing to show that there are any criminal antecedents against the applicant.

11. In view of the above, the application is allowed in the following terms:

- (A) The applicant shall be released on bail in connection with FIR No.0115 of 2023, dated 24th March, 2023, registered at Police Station Kongaon, District Thane City, on furnishing PR bond of ₹ 50,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant shall remain present before the Police Station Kongaon, District Thane, on the First Monday of every month between 10:00 a.m. to 12:00 noon, during the pendency of the trial.
- (C) The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to

be recorded in writing.

- (D) The applicant shall surrender his passport, if any, before the Trial Court within one week of being released on bail.
- (E) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (F) The applicant shall upon being released immediately inform the Investigating Officer of his Contact numbers and residential address and update the same in case of any change.

12. 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.

13. 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.

14. The application is disposed of in above terms.

(MANISH PITALE, J.)