

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

BAIL APPLICATION NO. 4381 OF 2024

Faizan Ayaz Momin ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 4682 OF 2024**

Ajay Ramlakhan Yadav ... Applicant
Versus
The State of Maharashtra ... Respondent

Adv. Lochan P. Chandka for the Applicant in both BAs.
Ms. Megha S. Bajoria, APP for Respondent-State in BA/4381/24.
Mr. Tanveer G. Khan, APP for Respondent-State in BA/4682/24.
ASI - R. S. Gaikwad, Kongaon Police Station, Bhiwandi, Dist. Thane.

**CORAM: MANISH PITALE, J.
DATE : 14th DECEMBER 2024**

P.C. :

. Heard learned counsel for the applicants and learned APPs for the respondent-State.

2. The applicants in the present case were arrested on 24th March 2023, in connection with FIR No.0115 of 2023, dated 24th March 2023, registered at Kongaon Police Station, Dist. Thane, for offences under Sections 328, 273 and 276 of the Indian Penal Code, 1860 (IPC) and Sections 18(A), 18(a)(4), 18(C), 27(b)(ii),

27(d) of the Drugs and Cosmetics Act, 1940. Subsequently, offences were registered under Sections 8(c), 21(c) 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. On information being received that cough syrup containing contraband codeine was being handled, action was undertaken by the Investigating Authority and the applicants alongwith other accused persons were 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.

4. At the outset, the learned counsel for the applicants claims relief for the applicants on the principle of parity. It is submitted that co-accused person was granted bail by this Court by order dated 6th December 2024, passed in Bail Application No. 3887 of 2024, on the ground that there was non-compliance of the mandatory procedure contemplated under Section 52A of the NDPS Act. It was submitted that since the said ground inures to the benefit of the applicants in these applications also, this Court may consider allowing the applications.

5. It appears from the allegations made in the present case that at the date and time of the incident and at the spot from where the

contraband was seized, the applicant in Bail Application No. 4381 of 2024 had arrived in an Auto-rickshaw with two other co-accused persons, while the applicant in Bail Application No. 4682 of 2024 was driving the tempo, wherein the contraband was allegedly brought to the spot.

6. The learned APPs could not demonstrate that the aforesaid mandatory procedure under Section 52A of the NDPS Act was indeed complied with in the present case. In such circumstances, the observations made by this Court, while allowing the bail application of the aforesaid co-accused person, assume significance. In the said order dated 6th December 2024 passed in Bail Application No. 3887 of 2024, this Court had observed as follows :

*“8. In the case of **Union of India Vs. Mohanlal & Anr., (2016) 3 SCC 379**, 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 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.”

7. This Court is convinced that on the principle of parity, the present applications also deserve to be allowed.

8. Accordingly, the applications are allowed in the following terms:

- (a) The applicants shall be released on bail in connection with FIR No. 0115 of 2023, dated 24th March 2023, registered at Kongaon Police Station, Dist. Thane, on furnishing P.R. Bond of Rs. 50,000/- each and one or two sureties in the like amount.
- (b) The applicants shall report to the Kongaon Police Station, Dist. Thane, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial.
- (c) The applicants shall cooperate with the trial Court for expeditious trial and they shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- (d) The applicants shall surrender their original valid

passports, if any, before the trial Court within one week of being released on bail.

- (e) The applicants shall not tamper with the evidence of the prosecution and they shall not influence the informant, witnesses or any other person concerned with the case.
- (f) The applicants, upon being released on bail, shall place on record of the trial Court the details of their Contact Number and residential address with updates in case of any change.

9. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail applications. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

10. The applications are disposed of.

MANISH PITALE, J.