



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.1150 OF 2024

(Jatin s/o Jagmohandas Doshi Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.M. Jaltare, Advocate, Advocate for the applicant.
Ms S. Haider, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 18, 2024.

Heard.

2. By this application, the applicant is seeking bail as he came to be arrested on 30.10.2024 in connection with Crime No.532/2024 registered with police station Barshitakli, District Akola for the offence punishable under Sections 22(c), 25, 29 and 8(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 and Sections 318(4), 336(3) and 338 of the Bharatiya Nyaya Sanhita, 2023.

3. The crime is registered on the basis of report lodged by Police Inspector Shankar Shelke, L.C.B., Akola on 24.10.2024 on an allegation that when he was on patrolling duty within limits of Barshitakli Police Station at about 6.00 PM, he received secret information that psychotropic substance Mephedrine (MD) was manufactured in the premises of defunct ginning mill of Mohammad Shafi situated at Barshitakli. The drugs was manufactured for the purpose of sale. The informant

immediately intimated to his superiors and conducted the raid. After following due procedure the raid was conducted and on conducting the raid Ephedrine powder contained in 22 plastic packets total 5548 grams worth of Rs.1,38,70,000/- was seized including 133 kgs. Soda ash, 410 Ltrs. Acetone, 60 Ltrs, Chloroform, 40 Ltrs. Methamphetamine (M.M.), 140 ltrs. Prepolphenol (PP). Various articles are also seized. As far as the present applicant is concerned wherein it is alleged that the present applicant has supplied the said chemicals to the other co-accused which are used for manufacturing the said narcotic substance. On the basis of the said report, police have registered the crime and the investigation was carried out.

4. Learned Counsel for the applicant submitted that as far as the supply of the goods by the present appellant is concerned, nowhere it reveals from the recitals of the FIR that the said chemicals were narcotic substance and used for preparation or manufacturing Mephedrine (MD). He submitted that the bills show that the applicant has sold MMA, Acetone, Chloroform and HCL chemicals to A.N. International and also prepared invoice for the same having Invoice No.152 dated 10.10.2024. The applicant is not aware who has misused the said chemicals. Now, the investigation is already completed. As far as the chemicals which are supplied are concerned are not within the definition of Narcotic Drugs and Psychotropic Substance, and therefore, the rigour under

Section 37 will not attract. In view of that, he be released on bail.

5. Learned APP strongly opposed the application and submitted that the chemicals which are supplied by the present applicant are used for manufacturing the narcotic drugs, and therefore, the involvement of the present applicant revealed during the investigation. She also invited my attention towards the statement of one Mohammad Rafique Sheikh who has transported the said chemicals by obtaining from the present applicant to the other co-accused. She has also further invited my attention towards the bills and submitted that these bills are the forged bills. In view of that, prayed for rejection of the application.

6. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the present applicant is the Businessman, runs his business at Mumbai. As per the allegations, he has supplied the chemicals like MMA, Acetone, Chloroform, HCL and so others. As far as the chemicals which are supplied by the present applicant is concerned from the entire investigation papers it nowhere reveals that the said chemicals were used for manufacturing the narcotic drugs and psychotropic substances. The bills which are produced before the Investigating Officer, at this stage, nothing is on record to show that the said bills are forged bills. The

Central Bureau of Narcotics recently issued a public notice wherein this aspect of controlled substance was considered and it was informed that Considering the latest trends in the sourcing and use of alternate or substitute chemicals for illicit drug manufacture, there is requirement that all sectors of industry, including manufacturers, importers, exporters, distributors and other traders, such as online traders and platforms, should be involved. Additionally, the efforts are not limited to the chemical industry in the narrow sense but we wish to extend it also to the fine and speciality chemical industry, such as the flavour and fragrance industry.

7. It is submitted by the learned Counsel for the applicant, at the most, it is a controlled substance and the substance which was seized is not necessarily used only to make a narcotic drugs or psychotropic substance but it is a versatile substance which can be used in manufacturing of various medicines by the pharmaceutical industries.

8. The term 'controlled substance' is defined under Section 2 (viid) of the NDPS Act and it reads as follows:

“‘controlled substance’ means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances

or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance.”

9. The controlled substance is a precursor used to manufacture narcotic drugs and psychotropic substance. The Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 regulates the manufacture, trade, commerce and possession and consumption of controlled substances.

10. The Notification issued in exercise of powers conferred by clause (viia) and (xxiia) of Section 2 of the NDPS Act, the Central Government has specified the quantity in relation to the narcotic drug or psychotropic substance and it do not have inclusion of ‘Ephedrine’ in it. However, the substance ‘Ephedrine’ is found to be contained in a Schedule, which is appended to the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, which is issued by the Central Government, in exercise of powers conferred by Section 9A of the NDPS Act. Under the said Order of 2013, the Central Government is empowered to include any ‘controlled substance’ in one or more Schedules.

11. The NDPS Act defines the ‘controlled substance’ in Section 2 (viid) which is already mentioned above.

12. The Order of 2013 prohibits the manufacture, distribution, sale, purchase, possession, storage or consumption of any controlled substance, included in Schedule A appended to the order, without a unique registration number issued by the Zonal Director of Narcotics Control Bureau. The Schedule enlisting the controlled substances, includes Ephedrine and its salts. Pertinent to note that Schedule A, Schedule B and Schedule C, which enlist the controlled substances with reference to its use, include Ephedrine, its salts and preparation thereof.

13. Section 25-A provides the Punishment for contravention of orders made under Section 9-A which reads as :

“If any person contravenes an order made under Section 9-A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees. Proviso shows that provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.

Contravention of order made under Section 9-A is punishable with rigorous imprisonment for a term which may extend to

ten years and a fine of Rs.1,00,000/- which is permitted to be exceeded.”

14. In light of the report of the Chemical Analyser, the applicant alleged to be supplied the chemicals; however, exactly which chemicals he has supplied is not investigated by the Investigating Officer. The substance seized being analysed as ‘Ephedrine’, the quantity is immaterial and cannot be a matter of consideration while establishing the charge under Section 25-A as the quantity is relevant only as regards the substance which falls under the category of ‘Narcotic Drugs’ and ‘Psychotropic Substances’. As far as bar imposed under Section 37(1) is concerned, it comes into picture when a person is accused of an offence punishable under Section 19 or Section 24 or Section 27-A and for the offence involving commercial quantity. Since the substance which was seized which is now identified as a ‘controlled substance’, *prima facie*, the offence committed by him do not fall in any of the said category. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) The applicant – Jatin s/o Jagmohandas Doshi in connection with Crime No.532/2024 registered with police station Barshitakli, District Akola for the offence punishable

under Sections 22(c), 25, 29 and 8(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 and Sections 318(4), 336(3) and 338 of the Bharatiya Nyaya Sanhita, 2023, be released on bail on executing P.R. bond of Rs.25,000/- with one or more solvent sureties in the like amount.

(iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case so as to dissuade him from disclosing the facts to the Court or any police officer and shall tamper with the prosecution evidence.

(iv) The applicant shall attend the concerned police station as and when required for the investigation purpose and in addition to that twice in a month i.e. on 1st and 15th day of every month, till culmination of the trial and shall cooperate with the investigating agency.

(v) The applicant shall not leave India without prior permission of the Court and he shall surrender his Passport if he is having, before the investigating agency.

15. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)