

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.866 OF 2024

Rahul Anil Jaiswal .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Vivek Sharma, Advocate i/by H. R. Sharma and Associate for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent – the State of Maharashtra.
 - Mr. Nagesh Chikane, API, Investigating Officer, ANC Ghatkopar, Crime Branch, Mumbai a/w. API – R. V. Londhe.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2025

P.C.:

1. Heard Mr. Sharma, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State of Maharashtra. Perused the record.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking regular Bail by Accused No.3 in connection with C.R. No.55 of 2023 registered with Anti Narcotic Unit – Ghatkopar, Mumbai for offences punishable under Section 8(c) read with Sections 22(c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. Admittedly, there is no physical recovery of the contraband from Applicant. The seizure of contraband is from Accused Nos.1 and

2. The contraband in question is 286 bottles of 100 ml each of Phensirest cough syrup labelled as Chlorpheniramine Maleate and popularly known as Codeine Phosphate Syrup from Accused No.1 and similarly recovery of 284 bottles from Accused No.2.

4. In a chance raid while patrolling, First Informant – Complainant found Accused Nos.1 and 2 standing in a suspect condition in public place opposite Metro Bridge Pillar No.P- 74, Sewri-Chembur Road, Opposite – Sion Bus Depot, Mumbai – 400022. They are alleged to have two plastic bags in their hands according to the prosecution case. When Accused Nos.1 and 2 were confronted and investigated upon they were found to possess the alleged contraband. Both Accused Nos.1 and 2 are arrested and contraband is seized.

5. On investigation, prosecution case is revealed that Accused No.1 deposited an amount of Rs.2,00,000/- on one occasion and Rs.1,00,000/- on another occasion in the Bank Account of ‘Well Done Pharma’ a proprietorship concern of which the Applicant is shown to be sole proprietor. This proprietorship concern is based in Varanasi. Applicant is subsequently arrested on 22.06.2023 from Varanasi and on transit remand was brought to Mumbai.

6. Mr. Sharma would submit that material placed on record would clearly show the involvement of one person called Akhilesh Singh who operated with an alternate name *alias* called Nilu Monica

Patel. He would submit that Applicant was an employer of Akhilesh Singh and the 'Weldone Pharma' business belonged to him. Substantial material in the form of Whatsapp chat has been referred to and relied upon by prosecution to indict the Applicant. The case of the Applicant before the Court is that Akhilesh Singh is the *de facto* owner of 'Well Done Pharma' but Mr. Sharma would fairly concede that Applicant before the Court handled the pharmacy shop called 'Well Done Pharma' which belonged to Akhilesh Singh. He would submit that admittedly license also is in the name of Applicant.

7. It is ironical and equally surprising that a eight standard passed person of the Applicant's stature who in the past used to sell mineral water bottle (drinking water) at Varanasi Railway station has been given a license to open a pharmacy shop. Be that as it may, in so far as the real culprit is concerned, there is no material placed on record by prosecution before the Court.

8. Mr. Karmakar would vehemently argue that quantity in question is above commercial quantity and therefore indictment of Applicant and his role in crime is clearly spelt out. If that would have been the case, all that prosecution has to *prima facie* show before the Court was the money link. Merely alleging that amount were paid by Accused No.1 in the Bank Account of 'Well Done Pharma' is not good enough for consideration. Substantial investigation appears to have

been done which is evident from the papers placed before me. The charge-sheet is also filed.

9. The most surprising element is that the Investigating Officer himself states in the charge-sheet that on the basis of the statement recorded of the Applicant and another Accused No.4 and material on record, the wanted Accused namely Nilu Monica Patel is the same person as Akhilesh Singh. The Investigating Officer has therefore dropped the name of wanted Accused – Nilu Monica Patel. In the first instance, indictment of wanted Accused – Nilu Monica Patel was done by the Investigating Officer on the basis of substantive documentary evidence placed on record in the form of Whatsapp chat which evidences the details of deposit of money, as also, the movement of alleged contraband. The contraband was booked and has come by transport through Vijay Lakshmi (2) Trans Solution Private Limited belonging to proprietorship of one Mr. 'Pandit ji' having his office in Varanasi. No investigation has been done in that regard by Investigating Officer.

10. There is substantial material which shows deposit of money in the account of 'Well Done Pharma'. 'Well Done Pharma' possesses the licence. It was imperative on the part of the Investigating Officer to investigate on this aspect as to how this Applicant would even hold a license since he is not even educated beyond eighth standard.

Investigating Officer when he visited Varanasi found Applicant before me sitting and managing the pharmacy shop called 'Well Done Pharma', photographs of which have been placed on record by the Investigating Officer with the license in the name of Applicant prominently displayed behind the counter.

11. However lack of investigation as observed above is the issue which does not persuade me to accept the case of the prosecution. There is one more issue which was needed to be *prima facie* investigated and that is the origin and manufacture of the contraband in question. It is *prima facie* seen from the available material placed on record that batch of the alleged contraband i.e. Cough Syrup has been sold and supplied by M/s Knox Pharmaceuticals Company and appropriate investigation ought to have been done and material placed on record before the Court as to who procured the same and paid for the same.

12. That apart, it is seen that prosecution has dropped the two other persons namely Akhilesh Singh whose role has been delineated hereinabove *prima facie*, on the basis of available documents and one Mr. Ayaz Khan whose name has figured prominently in the charge-sheet.

13. The rigours of Section 37 of the NDPS Act is what is argued by the prosecution. Mr. Karmakar would place reliance of the decision

of Supreme Court in the case of *State by the Inspector of Police V/s. B. Ramu*¹ to contend that if there is recovery of huge quantity of narcotic substances then the Court should be slow in granting even regular bail to Accused. The question before me is whether the contraband was seized from the possession of the Accused or otherwise. *Prima facie*, that is not the case. If indictment of Accused is required on the ground of his complicity then there are questions which require *prima facie* answer as delineated hereinabove.

14. Next decision relied upon is in the case of *Narcotics Control Bureau V/s. Mohit Aggarwal*² of the three Judge Bench of the Supreme Court to contend that even if possession of contraband is not recovered from Accused but his complicity and involvement in crime is established *prima facie* on the basis of reasonable grounds then this Court will have to consider those reasonable grounds to be *prima facie* grounds and reject the Bail Application of the Applicant in the present case.

15. To counter the aforesaid submission of Mr. Sharma has placed on record the following decisions of the Court:-

(i) *Bharat Chaudhary V/s. Union of India*³;

(ii) *Mohd. Muslim @ Hussain V/s. State (NCT of Delhi)*.⁴;

1 [2024] 2 S.C.R. 357 : 2024 INSC 114.

2 AIR 2022 SC 3444.

3 (2021) 20 Supreme Court Cases 50 : 2021 SCC OnLine SC 1235.

4 2023 SCC OnLine 352 : @ Special Leave Petition (CRL.) No(s).915 of 2023.

and

(iii) *Mohd. Hussain Ahmed Shaikh @ Babool Bhai V/s. State of Maharashtra and connected matters*⁵.

16. On the basis of the aforesaid decisions, Mr. Sharma would contend that rigours of Section 37 of the NDPS Act would not apply in the present case as the only material placed on record is the basis of Whatsapp chats and reliance on merely on Whatsapp chats without any corroboration for the involvement or complicity cannot be relied upon. He would also submit that equally confessional statement which is the only other material placed on record cannot be considered in the present case in view of the fact that the present case clearly falls short of investigation. After considering and perusing the record of the present case and in view of my above observations regarding lapse in investigation the Application stands allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount out of which one shall be a local surety;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on

⁵ Bail Application No.2000 of 2023 decided by this Court (Coram : N. J. Jamadar, J.) dated 09.05.2024.

the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter or as and when called;

- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for revocation of this order;
- (iv) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vi) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

17. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of

enlargement of Applicant on bail and shall not influence the trial in the present case.

18. In the above terms, Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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