

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 968 OF 2024

Sadanand Wamanrao Rane

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Gorakh Hanumant Liman a/w Ms. Ashwini Gorakh Liman for Applicant
- Ms. Savita M. Yadav, APP for State

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2025

P. C.:

1. Heard Mr. Liman, learned Advocate for Applicant and Ms. Yadav, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. 1604/2022 registered with Dahisar Police Station for the offences punishable under Section 8(c) read with Section 22 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short, "**NDPS Act**").

3. Applicant has been indicted and in custody for the last two years for being apprehended with possession of 20 bottles of Codeine Phosphate being the alleged contraband which is designated as commercial quantity.

4. Mr. Liman would draw my attention to the documents annexed to the chargesheet and would persuade me to see the same and argue that there is *prima facie* large scale discrepancy and dichotomy in the procedure followed by the prosecution for search and seizure and most importantly the procedure followed for post-seizure preparation of the inventory panchnama. At the outset, he would draw my attention to the FIR which is appended at page No. 19 which is filed by one Mr. Krushnakant Pandharinath Dhanu, Police Nayak and would submit that the said FIR is not signed by him. What is submitted by Mr. Liman is true on perusing the FIR. He would next draw my attention to page Nos. 23 and 25. The statement at page No. 23 is recorded four days prior to the alleged date of FIR and it is dated 09.12.2022. It is the statement of one Mr. Sanjay Shantaran Bangar, Police Inspector which is an unsigned document. Second statement at page No. 25 is statement of Mr. Vijay Krushna Rane, Sahayyak Fauzdar which is one day prior to the date of the incident which is dated 12.12.2022. In that statement, the said deponent has stated that he is the complainant which is seen at page No. 26 in the penultimate paragraph. Ironically the said statement is also unsigned. Similar is the case with the statement appended at page No. 27 which is of Police Nayak Mr. Shailesh Ramakant Kini which is four days prior to the date of lodging of the FIR which is dated 09.12.2022 which also

states that he is the complainant but it is an unsigned statement. Beginning with the aforesaid dichotomy prosecution has committed *prima facie* mistakes even further. Though it is stated in the FIR that this is a chance recovery, the documents annexed to the chargesheet show that it is not so. For that Mr. Liman would draw my attention to page Nos. 45 and 46 of the Application whereby it is seen that prosecution officers had prior intelligence information of the movement of the alleged contraband in question and therefore as stated in the FIR, it cannot be considered to be a chance recovery. There is further dichotomy pointed by Mr. Liman in so far as the inventory panchnama annexed at page No. 55 is concerned when read that the time of release of the alleged contraband from the strong room for the purpose of the procedure prescribed under sub-section (3) of Section 52-A of the NDPS Act. In so far as the said submission is concerned, learned APP would submit that since the strong room and the Magistrate Court is situated in the same building that ground will not be relevant.

5. From the above, *prima facie* when the compliance of the mandatory provisions of NDPS Act are found to be flouted from the primary documents of the prosecution itself, Applicant has clearly made out a case for bail since the action of the prosecution stands clearly vitiated. In that view of the matter, present Application is

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. 30,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the concerned Investigating Officer on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter 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 cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport, if any, within two weeks after being released on bail with the Trial Court;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

(vi) 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;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

6. It is clarified that the aforesaid observations are *prima facie* on the documents appended to the chargesheet and may not be construed as expression of the Court so as to affect the trial. Trial Court shall proceed and adjudicate the matter strictly on merits in accordance with law.

7. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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Date: 2025.02.12
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