

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1527 OF 2024

Siddhik Ali Sayyed ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Aniket Nikam i/b. Mr. Amit Icham for Applicant.
Mr. P. P. Jadhav, APP for Respondent-State.
Mr. S. D. Patil, PSI, Shivajinagar Police Station, Thane.

CORAM : MANISH PITALE, J.
DATE : JANUARY 10, 2025

P.C. :

. Heard Mr. Nikam, learned counsel appearing for the applicant and Mr. Jadhav, learned APP for the respondent-State.

2. The applicant, in the present case, is arraigned as accused No.2 in connection with FIR No.0346 of 2023 dated 08.04.2023 registered with Shivajinagar Police Station, Mumbai, for offences under Sections 8(c), 22(a) and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (NDPS Act).

3. The FIR was registered on the basis of a raid carried out on 07.04.2023 based on secret information received to the effect that contraband was to be handled by certain persons. The contraband, in the present case, is *codeine* as 1050 bottles of Codein Phosphate Chlorpheniramine Maleate Syrup were recovered during the raid. The accused No.1 was arrested from the spot and thereafter the investigation was carried forward. The applicant was arrested on 13.04.2023. There are total seven accused persons in the present case.

4. By order dated 18.07.2024 passed in Bail Application No.809 of

2024 (*Seema @ Reshma Arif Shirgaonkar Vs. State of Maharashtra*), this Court granted bail to accused No.4.

5. The learned counsel appearing for the applicant submits that although the applicant is not claiming parity with the co-accused No.4, who has been granted bail, certain observations made in the order passed in favour of the said accused person do inure to the benefit of the applicant herein.

6. Since copy of the charge-sheet is placed on record, this Court has perused the charge-sheet along with documents, with the assistance of the learned counsel for the applicant and the learned APP.

7. The case of the investigating authority against the applicant appears to be that, he is the supplier of the contraband. It is alleged that the applicant, who is based in Gujarat, was supplying the aforesaid contraband through transport services.

8. The learned counsel for the applicant referred to the material on record including the disclosure statements of the co-accused persons and the statement of certain witnesses to contend that there is no material to link the applicant with the contraband in the present case. It is submitted that the name of the applicant has featured in a statement of one of the witnesses recorded on 20.04.2023, who is a person associated with one of the courier services through whom the applicant was allegedly receiving cash amounts for supply of contraband. It is submitted that such statements of the persons associated with the courier services have been commented upon by this Court in the order granting bail to the accused No.4 and the said observations inure to the benefit of the applicant. It is submitted that the applicant has remained behind bars for about one year and eight months. It is further submitted that other than the recovery statements of the applicant himself, there is nothing to link

the applicant with the contraband in the present case.

9. The learned APP, on the other hand, submits that statements of the persons associated with the courier services read with the other material on record does make out a *prima facie* case against the applicant to the effect that he was receiving cash amounts from such courier services and in lieu thereof, he was supplying the aforesaid contraband to transporters, whose details have also come on record.

10. This Court has perused the material on record. It is to be noted that the applicant was arrested on 13.04.2023 and the documents placed on record with the charge-sheet fall short of demonstrating any material with the investigating authority prior to 13.04.2023, that would indicate the involvement of the applicant with regard to supply of the aforesaid contraband. Although much emphasis was placed by the learned APP on the statement of the accused No.1 recorded on 15.04.2023, it is to be noted that the said statement was recorded two days after the arrest of the applicant. The said statement, at no place, refers to the name of the applicant, although there is reference to the names of co-accused persons including one Sikander, who is absconding. The statement of another co-accused person i.e. accused No.3 also does not show that the name of the applicant has been specifically mentioned or that any role is attributed to him.

11. In this situation, reliance was sought to be placed on statement of witness - Ramesh Bhai dated 20.04.2023, said to be associated with one of the courier services. A perusal of the aforesaid statement shows that he gave details of dates on which the applicant allegedly received certain cash amounts.

12. With regard to the aforesaid statement and another such statement of a person associated with courier services, this Court had made the

following observations in the order dated 18.07.2024 passed in favour of accused No.4 - Seema @ Reshma Arif Shirgaonkar:

“9. The other material on record is in the form of statements of the aforesaid two couriers, one located in Gujarat and the other at Mumbai. Their statements were recorded on 20th April, 2023 and in such statements details have been given about months transferred allegedly in lieu of supply of the contraband. In their statements, the name of the applicant along with mobile number is featured.

10. But, there is presently nothing on record to indicate as to how the investigating authority reached out to these two couriers and recorded their statements. None of the accused persons, much less accused Nos.2 and 3 revealed their names or any such *modus operandi* of transfer of amounts in exchange for contraband. In any case, there is scant material on record to link such transfers of amounts to supply of contraband from Gujarat.”

13. The aforesaid observations would equally apply in favour of the applicant herein as the investigating authority has not been able to demonstrate as to what made it to record the statements of the aforesaid persons associated with the courier services. In any case, there is no material to show any linkage between the said cash amount allegedly received by the applicant and supply of any contraband.

14. As noted hereinabove, the aforementioned statements of witnesses have been recorded after the applicant was already arrested on 13.04.2023 and the charge-sheet does not reveal any material prior to his arrest, indicating his link with the contraband. That leaves only recovery statements of the applicant himself, that are sought to be relied upon by the investigating authority. Such material, in itself, cannot be the basis to resist the prayer for bail made on behalf of the applicant. There is nothing brought before this Court to show that the applicant has criminal antecedents. Therefore, the applicant has satisfied both the limbs of the twin test contemplated under Section 37 of the NDPS Act and the present application deserves to be allowed.

15. Accordingly, the application is allowed in the following terms:-
- (A) The applicant shall be released on bail in connection with FIR No.0346 of 2023 dated 08.04.2023 registered with Shivajinagar Police Station, Mumbai on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
 - (B) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
 - (C) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
 - (D) The applicant shall report to Shivajinagar Police Station, Mumbai on the first Monday of every month between 10 a.m. and 12 noon;
 - (E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.
16. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.
17. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)