

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2012 OF 2024

Sultan Mohammad Fasialam Shaikh	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Shreerat Kamath i/b Ms. Puja Yadav, Advocate for Applicant.
 - Mr. Balraj B. Kulkarni, APP for State.
 - PSI – S.D. Patil, Shivaji Nagar Police Station Mumbai.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 25, 2025

P. C.:

1. Heard Mr. Kamath, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 873 of 2023 registered with Shivaji Nagar Police Station for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Applicant is indicted and is incarcerated in the aforesaid crime for being apprehended with conscious possession of 12 bottles of alleged contraband Codeine Phosphate. Applicant is incarcerated since 04.10.2023. Investigation has been completed and chargesheet

has been filed. According to the prosecution case Applicant was apprehended in a chance recovery at a public place in Govandi Mumbai on 04.10.2023 at about 01:10 am.

4. It is stated in the Seizure Panchanama dated 04.10.2023 appended at page No.32 of the Application that Applicant was apprehended with a white coloured bag having the alleged contraband. After seizure of the alleged contraband 12 bottles of Codeine Phosphate Syrup was seized and they were kept in a sealed bag nomenclated as Sample A (प्रदर्शित 'अ') and while doing so the same had signatures of Police Inspector Gavshete and two Pancha witnesses alongwith the seal thereon.

5. Mr. Kamath, learned Advocate for Applicant has drawn my attention to the Inventory Panchanama of the seized contraband which was carried out in which *prima facie* dichotomy has been noticed. Before the Magistrate where procedure under Section 52A of the NDPS Act was undertaken by the prosecution it is seen that said Inventory Panchanama *qua* the alleged contraband in question has been signed by Assistant Police Inspector Bharat Jadhav. The name and signature of the Senior Police Inspector who had seized the contraband is conspicuously absent at the time of Inventory Panchanama. That apart, *prima facie* it is also seen that signature of Applicant was indiscriminately obtained by the prosecution on 6 blank

memos which are appended at page Nos. 122 to 124 of the Application which according to learned Advocate for Applicant are forming part of the chargesheet. It is seen that signature has been obtained alongwith signature of the Assistant Police Inspector Bharat Jhadav in respect of 5 labels, *inter alia*, pertaining to the present Applicant and in respect of one label which is appended at page No.124 it is in respect of an Accused person called Sannaullah Habibullah Khan. Though there are two accused persons in the present crime name of the Accused No.2 in this crime is Abuzaid Imtiyaz Khan.

6. Though the learned APP would submit across the bar that the said signatures of the Applicant which are obtained are not part of the chargesheet, prima facie they appear from the chargesheet and bear the details of this case.

7. The Advocate for Applicant has placed the entire copy of chargesheet before the Court to submit that they form the part of the chargesheet according to the prosecution case. That apart learned Advocate for Applicant has drawn my attention to the Seizure Panchanama at page No.32 and would submit that confiscation of the alleged contraband when seen at the time of Inventory Panchanama is found to be in a Blue coloured bag. Said dichotomy is noticed when page 32 and page 40 of (Seizure Panchanama and Inventory Panchanama) are read together.

8. In view of the aforesaid dichotomy case of the prosecution *prima facie* appears to be a suspect since there is large scale discrepancy in the procedure followed under Section 42 read with Section 52A of the NDPS Act is concerned. In that view of the matter, Applicant gets benefit of doubt and is therefore entitled to be released on bail.

9. Hence, Bail Application is allowed 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;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) 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;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]