

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2482 OF 2024

Madansingh Bhavarsingh Rajpurohit	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Dilip Mishra a/w Mr. Ayaz Khan a/w Ms. Zehra Charania and Ms. Mallika Sharma , Advocates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State.
 - Mr. Santosh S. Ghadge, PSI , Anti Narcotic Cell Mira - Bhayandar Unit.

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CORAM : MILIND N. JADHAV, J.
DATE : APRIL 08, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 515 of 2023 registered with Nayanagar Police Station for offences punishable under Sections 8 (c), 22 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**'). Applicant is arraigned as Accused No.1, he is arrested on 06.10.2023 and he is incarcerated for 1 year 6 months 2 days.

2. It is prosecution case that during patrolling on 05.10.2023 at about 17:00 hours raiding party reached near Nayanagar where found the two accused persons behaving suspiciously. Raiding party approached them and questioned them about their details, they gave

evasive answers. Two panchas were brought and were appraised of the search, seizure and arrest procedure under the NDPS Act, panch witnesses conducted a search of the police personnel. Applicant and co-accused were appraised of their right under Section 50 of the NDPS Act. On search 2728 tablets of Dicyclomine Hydrochloride, Tramadol¹ Hydrochloride and Acetaminophen Capsules SPASMO PROXYVON Plus (in form of strips) were recovered from Applicant and 2736 tablets were recovered from Accused No.2. The contraband was seized, sealed and marked as 'A' and 'B' and the crime was registered under Sections 8 (c), 22 (c) and 29 of the NDPS Act.

3. Mr. Mishra, learned Advocate for the Applicant would submit that Applicant is falsely implicated in the present crime. He would draw my attention to page No.583 and would submit that Applicant is a pharmacist and has a valid license for distribution of medicines. He would submit that the alleged contraband was manufactured by a Pharmaceutical Company called 'Wockhardt Limited' where Accused No.2 worked as a Manager / Medical Representative which is affirmed by the statement of Mr. Nikhil Gandhi – proprietor of 'NH Associates' – the licensed Distributor of Wockhardt Limited, appended at page No.222 of the Application. He would also draw my attention to the statement of Mr. Sunil Dubey - Regional Manager of Wockhardt Limited appended at page No.97

1 SI. No. 238 - ZH. - Tramadol - small quantity : 5 gms ; commercial quantity : 250 gms.

which affirms Accused No. 2's role of advertising medicines to Doctors and Pharmacies. He would submit that Applicant (Accused No.1) placed a legitimate order with Accused No.2 who advertised the medicines. He would submit that there is no incriminating material placed on record to show that Applicant sold these medicine without prescription.

3.1. That apart, he would submit that there is clear transgression of mandatory provisions of Section 43 of the NDPS Act read with Rule 3 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 as the recovered contraband is not weighed during its seizure as the same is nowhere recorded in the Seizure panchanama appended at page No.60 of the Application, hence the rigors of Section 37 of the NDPS Act cannot apply to the present case.

3.2. He would submit that there is a clear dichotomy and discrepancy in the number of tablets (alleged contraband) recovered at the instance of accused persons. He would submit that FIR and Seizure panchanama dated 05.10.2023 appended at page No.60 record recovery of 2728 and 2736 tablets respectively however on perusal of Inventory panchanama dated 09.10.2023 appended at page No.73 it is seen / recorded therein that the number of tablets are 2872 and 2880 which makes the prosecution case highly questionable and suspect.

3.3. He would draw my attention to the Inventory panchanama dated 09.10.2023 appended at page No.73 wherein photographs of the seized contraband are *prima facie* absent alongwith certification by the Magistrate of the photographs is also absent. Hence he would submit that there is clear non-compliance of the mandatory provisions under Section 52A(2)(b) and 52A(3) which *prima facie* vitiates the statutory procedure and prosecution case thereby casting a doubt on the prosecution case. He would submit that on perusal of record of the case it is evident that mandatory requirement of Application to Magistrate under Section 52A(3) is completely missing. He would submit that there is clear non-compliance of filing of Form 5 which specifically lists the Application to be made and Certificate to be given thereon by the Magistrate or inventory sampling. This mandatory procedure under Rule 8 and 18 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 is completely vitiated in the present case therefore making prosecution case highly questionable.

3.4. He would submit that the Certificate issued by the Magistrate is not as the per the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. He would submit that there is further dichotomy in description of the alleged contraband recovered, FIR and Seizure panchanama appended at page No.60 records “tablets” where as description in the Certificate issued

by Magistrate under Section 52A (3) at page No.76 records “capsules” of the alleged contraband once again casting a doubt on the prosecution case.

3.5. He would draw my attention to the appraisal form appended at page No.77 wherein the said form is not in the prescribed manner as prescribed under Section 50 of the NDPS Act. Hence he would submit that there is clear violation of mandatory provisions of Section 50 of the NDPS Act.

3.6. He would submit that panchanama recorded on 07.10.2023 appended at page No.67 clearly shows and reflects that WhatsApp chats between Applicant and Accused No. 2 regarding the order of Dicyclomine Hydrochloride, Tramadol Hydrochloride and Acetaminophen Capsules SPASMO PROXYVON Plus tablets were purely in regard to a business transaction and nothing more.

3.7. He would submit that Applicant is a Pharmacist having a valid license for sale through his pharmacy called ‘Amisha Medical’. He would submit that Applicant has deep roots in the Society and has no criminal antecedents to his discredit. He would submit that Applicant is arrested on 06.10.2023 and is incarcerated for 1 year 6 months 2 days pending trial. He would submit that investigation is completed, chargesheet is filed and no further recovery is to be made at the instance of Applicant. Also commencement and completion of trial in

the near foreseeable future is bleak. Hence he would urge the Court to allow the Bail Application.

4. Mr. Karmakar, learned APP for Respondent – State would vehemently oppose the submissions of Advocate for Applicant. He would submit that the contraband seized in question is above commercial quantity and therefore indictment of Applicant and his role in the crime are clearly spelt out. He would submit that Applicant – Accused No.1 was found in conscious possession of the alleged contraband which clearly shows and reflects Applicant’s active role in the alleged crime. He would submit that the offence is serious in nature. He would submit that in view of Section 29 of the NDPS act there are financial money trails between the Accused No.1 and Accused No.2 of Rs.62,500/- alongwith the CDR details placed on record. He would submit that the absence of bills or payment in the account of Wockhardt Limited clearly show and reflect that Applicant involved himself in the said transactions which is *prima facie* illegal. He would submit that as commercial quantity of contraband is recovered from Applicant the provisions of Section 29 being invoked in the chargesheet and also rigours of Section 37 are applicable to present case. Hence he would urge the Court to reject the Application.

5. With the able assistance of the learned Advocates at the bar, I have perused the record of the case

6. On perusal it is seen that Applicant – Accused No. 1 was apprehended at the time of patrolling however, *prima facie*, there is a clear discrepancy observed on the face of record. Though the right of the person is subsequently made known to him under Section 50 of the NDPS Act in the same letter of appraisal, the inclusion of the word (परिचित) in Hindi in the letter was unwarranted and not required to be stated therein. Supreme Court in the case of State of **NCT of Delhi v. Mohd. Jabir**² has categorically held that the reason for intimating the provisions of Section 50 of the NDPS Act is to ensure that the accused is taken to a neutral third person for effecting search who would be a Gazetted Officer or a Magistrate. The effect of the word "nearest" is also explained by the Supreme Court in that case. This is *prima facie* transgression of the provisions of Section 50 of the NDPS Act due to inclusion of the said word in the said letter.

7. Section 52A(3) contemplates allowing the Application by Magistrate by issuing the Certificate in Form 5 as per Rule 8 and 18 of the Narcotic Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Form 5 specifically lists the Application to be made and Certificate to be given thereon by the Magistrate together. However on perusal of the Certificate issued it is seen that it is in continuity with the Inventory panchanama which is not in consonance with the statutory procedure which is fatal to the

2 Cri. Appeal No. 4931 of 2024 decided on 02.12.2024

prosecution case. Hence if the mandatory requirement prescribed under the NDPS Rules of 2022 are transgressed, it *prima facie* vitiates the seizure procedure which is fatal to the prosecution case. On perusal of Inventory Panchanama appended at page No.73 it is *prima facie* seen that photographs of the contraband which are to be appended alongwith the Inventory panchanama for identification are absent rather the mandatory procedure laid down under Section 52A (2)(b) is completely transgressed by the prosecution for reasons best known to them. Needless to state that complicity of the Applicant can be proved at the stage of trial.

8. It is *prima facie* seen that there is a clear transgression of the mandatory provisions of Section 43 of the NDPS Act read with Rule 3 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 as the recovered contraband is not weighed during seizure as seen from the Seizure panchanama appended at page No.60 of the Application. Also when the Seizure panchanama and Inventory panchanama are juxtaposed there is a clear dichotomy on the face of the record with regard to the number of tablets recovered.

9. *Prima facie* it is seen that there is variance in the description/identity of the contraband recovered as the Seziure panchanama and FIR describes the alleged contraband as 'Tablets'

however the Certification by Magistrate under Section 52A(3) describes the alleged contraband as 'Capsules' which is *prima facie* fatal to the prosecution case. The above issue is dealt with by the decision of this Court in the case of *Nitin Shankar Mhamunkar Vs. State of Maharashtra*³. Attention is also drawn to the decisions of this Court in the case of *Zadi Elayee Sande & Anr. Vs. The State of Maharashtra*⁴ (Coram : Bharati Dangre, J.) and *Jahangir Abdul Rehman Shaikh Vs. The State of Maharashtra*⁵ (Coram : Manish Pitale, J.) where the Court in similarly placed circumstances held in favour of the Accused considering glaring discrepancies in the sample description of the alleged contraband. These cannot be termed as technical glitches or technicalities as purported to be argued by the learned prosecutor. At every stage of the prosecution case there is non-compliance or transgression of statutory prescribed procedure.

10. *Prima facie* it is pertinent to note that there is no cogent evidence to establish that Applicant had at any point of time was involved in selling or delivering the alleged contraband. *Prima facie* the reliance placed on the CDR details / WhatsApp chats do not draw any inference of Applicant's involvement in the crime, however the complicity of Applicant can be proved at the stage of trial.

11. From the above, it is apparent that inspite of the stringent

3 Bail Application No. 464 of 2025 dated 18.03.2025.

4 BA. 2796 of 2021, decided on 04.10.2022.

5 BA. 1589 of 2024, decided on 26.06.2024.

test to be met by the Accused person under Section 37 of the NDPS Act for being released on bail, it has been held that the same does not fetter grant of Bail to the Accused person on the ground of undue delay in completion of trial. It has been held that incarceration for substantial period of time generally militates against the right to speedy justice and right to life and liberty guaranteed under Article 21 of the Constitution of India and hence conditional liberty must override the statutory embargo under Section 37 of the NDPS Act.

12. In the above *prima facie* facts and circumstances of the present case the Applicant before me has made out a case for bail. In the absence of criminal antecedents, prosecution not having complied with the mandatory provisions of the NDPS Act alongwith the NDPS Rules, 2022, Applicant being incarcerated for 1 year 6 months 2 days, investigation being completed and chargesheet being filed and commencement and completion of trial in the near foreseeable future being doubtful entitles the Applicant for grant of bail.

13. The Bail Application stands allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) After his release from jail, Applicant shall report to the

Investigating Officer as and when called for;

- (iii) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and/or non Court working day, the Applicant shall mark presence on the next working day;
- (iv) 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;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Before his actual release from jail, Applicant shall furnish their address where he proposes to reside after his release from jail, to the concerned Police Station and also to the trial Court; and
- (viii) 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.

14. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

15. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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