

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2716 OF 2024

Hemant Parasmal Sethia	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2894 OF 2024**

Vikas Champaklal Jain	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Ms. Mallika Sharma, Advocate i/by Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Zehra Charania for Applicant in BA No.2716/24.
 - Mr. Dilip Mishra a/w. Mr. Ayaz Khan and Ms. Zehra Charania for Applicant in BA No.2894/24
 - Ms. Megha S. Bajoria, APP for Respondent – State.
 - Mr. Santosh Ghadge, PSI, ANC, Mira-Bhayandar present.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 30, 2025.

P.C.:

1. Heard Ms. Sharma, learned Advocate for Applicant in BA No.2716/24; Mr. Mishra, learned Advocate for Applicant in BA No.2894/24 and Ms. Bajoria, learned APP for Respondent – State in both Applications.

2. This is a group of two Bail Applications filed by Applicant – Hemant Parasmal Sethia who is arraigned as Accused No.1 and

Applicant - Vikas Champaklal Jain who is arraigned as Accused No.2 in connection with C.R. No. 657 of 2023 registered by Kashimira Police Station for offences under Sections 8(c), 22, 22(c), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”). Both Applicants have been arrested on 19.09.2023 and are incarcerated since 1 year, 7 months and 12 days pending trial.

3. Present Bail Applications were argued by Ms. Sharma on 26.02.2025 when three grounds for grant of bail argued by Applicants were delineated by the Court and on 16.04.2025 when the matter came up for hearing, Ms. Bajoria, learned APP put forth the prosecution case and therefore order was passed directing her to take appropriate instructions and apprise the Court on the issues involved in the present case. Order dated 16.04.2025 reads thus:-

“1. Heard Ms. Sharma, learned Advocate for Applicants and Ms. Bajoria, learned APP for Respondent – State.

2. Present Bail Applications were argued by Ms. Sharma on 26.02.2025 and following order was passed:-

“1. Mentioned out of turn at the time of rising of the Court.

2. Heard Ms. Sharma, learned Advocate for Applicant and Ms. Bajoria, learned APP for State.

3. This is a group of two applications wherein both the Applicants are arrayed as co-accused. Ms. Sharma would draw the Court’s attention to the fact that alleged contraband which has been confiscated and seized is cough syrup amenable to the provisions of the NDPS Act.

3.1. She would draw my attention to page No.406 of the Application wherein the manufacturing company has itself endorsed the fact that they have manufactured the alleged cough syrup under its statutory license and it does not fall within the purview of the NDPS Act and / or rules made therein.

3.2. Reference is also invited by her to standing orders 1 of 88 and 1 of 89 under which the manufacturing of the alleged

contraband has been made and it stands outside the purview of the NDPS Act.

3.3. That apart she would also submit that there is a prima facie dichotomy in the memorandum panchanama / seizure panchanama because even before the said seizure panchanama is completed Applicants have been produced for medical examination which is apparent from the record of the case.

4. A Copy of this order shall be served on the prosecution by the learned Advocate for Applicant.

5. Learned APP shall take cognizance of the aforesaid issue and take appropriate instructions from the concerned Investigating Officer and apprise the Court on the next adjourned date.

6. Stand over to 11th March, 2025. To be listed on the Supplementary Board.”

3. There are three points raised by the Applicants prima facie for seeking bail. Firstly, it is argued that the alleged contraband of Codeine Phosphate Cough Syrup is not amenable to the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’). The answer to that given by the learned prosecutor in her response / reply on instructions is that prima facie the said fact may be true but she would submit that possession of a humongous quantity of Codeine Phosphate Syrup bottles is impermissible in law and therefore provisions of NDPS Act are invoked against Applicants who are apprehended and arrested in the possession of the alleged contraband.

4. This issue prima facie settles in favour of Applicants. Secondly, the second submission of Applicants is that they were apprehended with 5400 tablets each of the contraband called Alprazolam. It is prima facie seen that said tablets were contained in 90 strips of 60 tablets each. The grievance of Applicants is that the said tablets have not been weighed and weight of the alleged contraband is not stated at the time of seizure thereby violating the provisions of sub-section 2 of Section 42 of the NDPS Act and Rule 3 of the NDPS Rules, 2022 and therefore prosecution case stands vitiated qua the alleged contraband. In this regard, Ms. Bajoria, learned APP is directed by the Court to take appropriate instructions and accordingly apprise the Court on the next adjourned date.

5. Third submission made by learned Advocate for Applicants is that they were presented for medical examination at 10:10 p.m and 10:15 p.m. respectively on 18.09.2023 by the prosecution which is emanating from the record appended at page Nos.188 – 190 of the Application. However when the seizure panchnama at page No.18 is seen, it states that it commenced at 19:20 hours and ended at 22:45 hours on 18.09.2023. Submission made by the learned Advocate for Applicants is that if Applicants were presented for medical examination on the appointed time, then they would never have remained present at the time of seizure panchnama and

therefore prima facie the seizure panchnama appears to be a suspect and hence transgression is alleged. Ms. Bajoria, learned APP shall take specific instructions on the aforesaid issue also and apprise the Court accordingly on instructions.

6. Considering the aforesaid transgression prima facie seen from the prosecution record, case of Applicants deserves consideration for grant of bail, subject to hearing the learned APP on the above two issues.

*7. List the Bail Applications as 'Part Heard' on Board on **23rd April, 2025**. To be listed under the caption '**First on Board**'."*

4. Today, Ms. Bajoria, learned APP would submit that the issues raised by Applicants cannot be addressed at this stage as it would be a matter of trial and Bail Court cannot conduct mini trial at bail stage. She would argue that *prima facie* complicity of Applicants is made out from the material placed on record by prosecution as commercial quantity of contraband i.e. 150 bottles of Codeine Phosphate and Tripolidine Hydrochloride CHOCO+ syrup bottles of Laborate Pharmaceuticals India Limited Company and 5400 tablets of Alprazolam tablets have been recovered from each Applicant and therefore rigours of Section 37 of NDPS Act would apply to their case and hence their Bail Applications be rejected.

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

6. In so far as recovery of alleged commercial quantity of contraband Codeine Phosphate is concerned, letter dated 30.09.2023 which is appended at page No.406 onwards and is addressed by the

manufacturing company of the cough syrup CHOCO+ namely Laborate Pharmaceuticals India Limited to the prosecuting agency reveals that the said syrup does not *prima facie* qualify as a 'manufactured drug' or 'narcotic drug' as per the NDPS Act as it qualifies all conditions as mentioned in the Notification S.O.826(E) dated 14.11.1985 at serial No.35 which states that to qualify as a manufactured drug, the final product should contain more than 100 mg of Codeine in each dosage unit whereas in the cough syrup manufactured by Laborate Pharmaceuticals India Limited the composition of Codeine is 10 mg in each dose of 5 ml.

6.1. Next the photographs of the cough syrup bottles taken during inventory panchnama at page No.447 onwards when seen at page Nos.448 and 454 reveal that on the left top corner of the label of the cough syrup bottles symbol 'Rx' is affixed which stands for non-narcotic drugs as per schedule 'H1' of the Drugs and Cosmetics Rules,1985 governed by Drugs and Cosmetics Act, 1940. If the final product contains a substance listed in schedule 'H' then it falls under the NDPS Act which must be marked with the 'NRx' symbol on the left top corner of the label. In view of the above *prima facie* material regarding the alleged contraband seized, in so far as seizure of the cough syrup bottles purported to be contraband Codeine Phosphate are concerned is not made out at the inception as they are not covered under the NDPS Act but under the Drugs and Cosmetics Act, 1940.

Prosecution can prove its case at trial in accordance with law.

7. In so far as seizure of alleged contraband Alprazolam tablets is concerned, it is seen that there is a clear transgression of provisions of Section 42 which deal with seizure readwith Rule 3(2) of the Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 which states that the seized contraband shall be weighed separately and serially numbered which has to be done in presence of accused person and the panchas. Perusal of the seizure panchnama at page No.80 onwards reveals that the alleged contraband Alprazolam tablets were not weighed as provided by Rule 3(2) of the Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 and only its quantity i.e. 5400 tablets is shown be recovered from each Applicant. Though Ms. Bajoria, learned APP has argued that during inventory sampling procedure is followed, but that is at the time of implementing Rule 10 procedure. Admittedly at the Rule 3 stage procedure at the time of seizure as prescribed is not followed

8. Next discrepancy which is noted in the prosecution case is that the label appended to the envelope containing seized contraband does not bear signature of the Applicants however the seizure panchnama at page Nos.81, 83, 84 and 85 bears signatures of both Applicants. Hence *prima facie* the possibility of the seizure being

effected in absence of Applicants casts a shadow of doubt on the seizure effected by prosecution under Section 42 of the NDPS Act and makes the prosecution case a suspect and is fatal to prosecution case.

9. In the case of *Chandrabhan Janardhan Yadav Vs. State of Maharashtra*¹ this Court has emphasized the importance and need of adhering to and following the provisions of Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 by the prosecution. The said provisions are required to be followed in its strict sense because the NDPS Act is special law and provides for bar on grant of bail in cases involving commercial quantity under Section 37.

10. In view of my aforesaid *prima facie* observations in such glaring facts where the prosecution case is filled with discrepancies and there is discrepancy while effecting seizure of the contraband as also *prima facie* one of the seized contraband not being a manufactured drug covered under the NDPS Act, rigours of Section 37 of the NDPS Act cannot be said to be applicable unless prosecution has made out a *prima facie* case. Hence Applicants have made out a case for grant of bail.

11. Both Applications are allowed on the following terms and conditions:-

¹ 2025 SCC OnLine Bom 462

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, Applicants shall mark presence on the next working day;
- (v) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not leave the State of Maharashtra

without prior permission of the Trial Court; Applicants shall deposit their passport, if any, with the Trial Court within a period of two weeks from their release;

(vii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; 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.

12. 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.

13. Both Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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signed by AJAY
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