

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 Applicants.
 - 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 16, 2025.

P.C.:

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**’.

[MILIND N. JADHAV, J.]

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