

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3703 OF 2024

Fakruddin Momin

.. Applicant

Versus

Union of India and Anr.

.. Respondents

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- Mr. Girish Wani a/w. Mr. K.M. More, Advocates for Applicant.
- Mr. Shreeram Shirsat, Special PP for Respondent No.1 – Union of India.
- Ms. Shilpa K. Gajare – Dhumal, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 27, 2025.

P.C.:

1. Heard Mr. Wani, learned Advocate for Applicant. Mr. Shirsat, learned Special PP for Respondent No.1 – Union of India and Ms. Gajare – Dhumal, learned APP for Respondent No.2 – State.

2. In the present crime, Applicant is arraigned as Accused No.1. There are 5 accused persons in the present crime. It is an offence under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS**') for the Applicant having been apprehended in his tempo which was seized with 32 boxes of the alleged contraband namely Chlorpheniramine Meleate and Codeine Phosphate Monoecoff-Plus Cough Syrup. According to the prosecution case, Accused Nos.2, 4 and 5 have been enlarged on bail by the Court. Accused No.2 was supposed to be the recipient and beneficiary of the alleged contraband. Accused No.1 is a tempo driver and he was

contacted by Accused No.3 to transport the alleged contraband from the hospital premises / clinic of one Dr. Patel from Surat in Gujarat to a location in Bhiwandi.

3. According to the prosecution case, Applicant took his tempo bearing registration No. CJ-05-CT-2484 to Surat and under the instructions of Accused No.3 loaded the said tempo with the alleged contraband contained in 32 boxes and ferried the same to Bhiwandi where it was intercepted and he was apprehended.

4. Mr. Wani, learned Advocate for Applicant would persuade me to consider the fact that Applicant was a tempo driver who was completely unaware of the contents of the boxes and unconnected with present crime in question of which prosecution had received intel. He would submit that he was paid an amount of Rs.5,000/- as transport charges for the purpose of transferring the medicine boxes from Surat to Bhiwandi and was instructed to hand over the boxes to Accused No.2 who would meet him near Sagar Hotel in Bhiwandi. He would submit that Applicant had purchased the said tempo on his name by taking bank loan one year prior to the date of his arrest and he was repaying the bank loan on the same but because of his arrest and detention for the past two years, the said tempo has been confiscated and seized as also the Applicant is in jail.

5. He would submit that the role of the Applicant needs to be ascertained by the Court on the reading of the statement of the Accused No.3 recorded by the prosecution. He has placed on record a compilation of documents from the charge-sheet. A copy of the same has been given to Mr. Shirsat. Perusal of page No.135 of the said compilation is the statement of Accused No.3 which the prosecution has recorded during his inquiry under Section 67 of the NDPS Act. Though the learned prosecutor Mr. Shirsat would persuade the Court to not consider the said statement as it is a statement recorded under Section 67 of the NDPS Act and it would not have any evidentiary value at this stage considering the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872, *prima facie*, I need to read that statement in order to ascertain the *modus operandi* in which the alleged contraband was transferred by the subject vehicle tempo belonging to the Applicant which was driven by him to Bhiwandi. The entire *modus operandi* right from booking of the alleged contraband by Accused No.3 has been stated in the said statement. Not only this, the said statement can be used to corroborate the case of the Applicant because it is duly supported by substantive documentary evidence which is *prima facie* part of the charge-sheet itself.

6. *Prima facie* it is seen that the Company called G-Next belonging to one Dr. Patel was a proprietary concern and he had appointed the Accused No.3 to undertake the operation for supply of

medicines. However sometime in the month of July 2022 when Dr. Patel had a reasonable apprehension that there was something fishy in the dealings of Accused No.3, he directed Accused No.3 to shut down the operations of the said proprietary concern G-Next. Appropriate correspondence was entered into by Dr. Patel himself to ensure that the drugs licence and registration of G-Next was cancelled by the Statutory Authorities. To that effect, all such details are enumerated by him on the basis of documentary evidence appended to the charge-sheet in his voluntary statement which is also appended to the charge-sheet. Once this is the case it was incumbent upon Accused No.3 to not have operated under the name and pretext of G-Next in supplying any medicines to any person.

7. *Prima facie*, it is seen that in the first quarter of 2023 Accused No.3 has undertaken several correspondence for supply of medicines and the alleged contraband by impersonating himself as a Doctor when he was a mere medical representative on behalf of G-Next and entered into several transactions. The role of the present Applicant in transporting the goods after receiving his hire charges of Rs.5,000/- is not *prima facie* seen as being connected to or having any nexus with Accused No.3.

8. In that regard, Mr. Shirsat, learned Special PP would persuade the Court to consider the CDRs. He would submit that the

CDRs in this case would show that Applicant was in constant touch with Accused No.3 which would imply his complicity in the crime. It is but natural that if Accused No.3 has indulged in any operation of supplying a consignment and hired services of Applicant and his tempo to ferry the said consignment from Surat in Gujarat to Bhiwandi, he would be in constant touch with the Applicant. The CDRs which are placed on record by Mr. Shirsat do not establish live link between parties having nexus to the crime as envisaged by the Supreme Court in the case of *Bharat Chaudhary Vs. Union of India*¹, wherein the Supreme Court held that printouts of WhatsApp messages downloaded from the mobile phone or device seized cannot be treated as sufficient material to establish link between the accused persons under the NDPS Act at the stage of bail. It also held that statement of co-accused cannot be relied upon which was recorded under Section 67 of the NDPS Act at the interim stage of bail.

9. There is another submission made by Mr. Shirsat under Rule 67 of the NDPS Rules, 1985 and he would submit that there is no consignment note which the Applicant had carried in his tempo which is required to be issued in Form No.6. It needs to be remembered that if the said transaction would have been a valid transaction, undoubtedly the consignor and consignee of the said transaction would have issued a valid consignment note in Form No.6. But *prima facie* it

¹ (2021) 20 SCC 50

was not so. Despite G-Next having been shut down by its proprietor, despite its drug licence being cancelled, Accused No.3 fraudulently acted on its behalf. Question before the Court is whether the present Applicant, driver and owner of the tempo had knowledge of the crime.

10. As delineated herein above and in the facts and circumstances of the present case, considering the role of the Accused No.3 who booked the consignment when he was not authorized to do so under the name and pretext of G-Next proprietary concern belonging to Dr. Patel, the submission made by Mr. Shirsat cannot be countenanced. All that is seen is that there was a delivery challan which was given to the Applicant and a direction was given to him to hand over the consignment to Accused No.2 who has been released on bail by the Court. In view of the above, *prima facie*, Applicant has made out a case for grant of bail.

11. However at the request of Mr. Shirsat and considering the fact that the compilation of documents is given to him today, he is granted time till Monday to study the same and respond to the same.

12. List the Bail Application on Board on **01st April, 2025 at 02:30 p.m.** on the '**Supplementary Board**'. To be treated as '**Part-Heard**'.

[MILIND N. JADHAV, J.]

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