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

CRIMINAL BAIL APPLICATION NO. 4148 OF 2024

Anil Kailashnath Choursiya

Applicant

.. (Orig. Accused No. 4)

Versus

The State of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 703 OF 2025

Narayan Tararam Parmar

Applicant

.. (Orig. Accused No. 1)

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Ashutosh M. Kulkarni, Advocate i/b Mr. Kiran Gogavale for Applicant – Accused No. 1 in Bail Application No.703 of 2025.
- Mr. Kiran Gogavale, Advocate for Applicant – Accused No. 4 in Bail Application No.4148 of 2024.
- Mr. Sukanta A. Karmakar, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2025.

P.C.:

- 1.** Applicants in both these Application are seeking Regular Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with C.R.No. 55 of 2023 registered with ANC, Ghatkopar Unit, Mumbai for offences punishable under Sections 8(c), 22 (c) and 29 of Narcotic Drug and Psychotropic Substances Act, 1985 (for short 'NDPS'). Applicant - Accused Nos. 1 and 4 are before the Court.
- 2.** Applicant in Bail Application No. 4148 of 2024 is arraigned

as Accused No. 4 was arrested on 23.06.2023 whereas Applicant in Bail Application No. 703 of 2025 is arraigned as Accused No. 1 was arrested on 14.06.2023.

3. The contraband in question is 286 bottles of 100 ml each of Phensirest cough syrup labelled as Chlorpheniramine Maleate and popularly known as Codeine Phosphate Syrup from Accused No.1 and similarly recovery of 284 bottles from Accused No.2.

4. In a chance raid while patrolling, First Informant – Complainant found Accused Nos.1 and 2 standing in a suspect condition in public place opposite Metro Bridge Pillar No.P- 74, Sewri-Chembur Road, Opposite – Sion Bus Depot, Mumbai – 400022. They are alleged to have two plastic bags in their hands according to the prosecution case. When Accused Nos.1 and 2 were confronted and investigated upon they were found to possess the alleged contraband. Both Accused Nos.1 and 2 are arrested and contraband is seized.

5. On investigation, prosecution case revealed that subsequently on 17.06.2023 on the basis of Applicant - Accused No.1's statement, 40 boxes containing 5760 bottles were seized from the godown of Rivigo Mahindra Logistic, Bhiwandi. Further it is revealed that Applicant - Accused No.1 deposited an amount of Rs.2,00,000/- on one occasion and Rs.1,00,000/- on another occasion in the Bank Account of 'Well Done Pharma' a proprietorship concern of which

Accused No.3 is shown to be sole proprietor. This proprietorship concern is based in Varanasi.

6. Mr. Kulkarni, learned Advocate for Applicant - Accused No. 1. He would submit that Applicant is falsely implicated in the present crime. He would submit that there are multiple discrepancies on the face of record. He would submit that Section 52A(2) contemplates preparation of inventory panchanama as stated therein and making an application to the Magistrate for the purposes of Section 52A (2)(a)(b) and (c). Hence he would submit that on perusal of the record of the case it is evident that mandatory requirement of application to the Magistrate under Section 52A (2) and (3) is completely omitted. He would submit that there is clear non-compliance of Form 5 which specifically lists the Application to be made and certificate to be given thereon by the Magistrate. This mandatory procedure contemplated under Rule 8 and 18 of NDPS Rules, 2022 is completely vitiated in the present case making prosecution case highly questionable.

6.1. Next, he would draw my attention to the inventory panchanama dated 11.07.2023 appended at page No. 94 wherein photographs of the seized contraband are *prima facie* absent alongwith certification done by the Magistrate. Hence he would submit that there is non-compliance of the mandatory provisions under Section 52A (2) (b) which *prima facie* vitiates the statutory

procedure concerning the recovery thereby casting a doubt on the prosecution case.

6.2. He would submit that there is non-compliance of Section 42 (1) as the subsequent recovery of 5760 bottles on 16.06.2023 was conducted at 20:45 hours i.e. between sunset and sunrise which is stated in the panchanama appended at page No. 72 read at 73 and the same is further affirmed by the statement of the security guard of Rivigo Mahindra Logistics recorded on 28.06.2023 appended at page No. 164. He would submit that if at all it is prosecution case that search warrant or authorization could not be obtained. However provided that there was a reasonable belief that obtaining a warrant would facilitate concealment of evidence then those grounds of belief / reasons must be recorded by the officer concerned are to be sent to his immediate superior officer within 72 hours which is not followed in the present case which casts a doubt on the seizure and the prosecution case. Hence there is transgression of the provisions of Section 42 (1) and (2) on the face of record.

6.3. Next, he would submit that prosecution story itself indicates that Applicant deposited money via online payment in the account of 'Well Done Pharma' on 01.06.2023. However on 13.06.2023 one 'Recare Pharma' appears to have sent these cough syrup bottles in the name of 'Parmar Pharma' (establishment that has shut down and its

license is surrendered). He would submit that prosecution has not carried out any investigation regarding Recare Pharma which casts a doubt on the investigation conducted by the prosecution. He would submit that on perusal of the statement of the security supervisor of Rivigo Mahindra Logistics, Bhiwandi recorded on 28.06.2023 appended at page No. 164, it is seen that an invoice bill for 40 boxes of cough syrup was verified at the counter before conducting the raid. He would submit that Applicant had initiated business with 'Well Done Pharma' which is a legal entity however the order was sent by 'Recare Pharma' in the name of 'Pramar Pharma' for which no investigation is conducted by prosecution and hence it clearly shows and reflects that Applicant purchased the alleged bottles legally.

6.4. He would submit that Applicant – Accused No.1 has strong credentials as he has been involved in Pharma / Pharmacy business for many years and even had a valid medical license in the name of 'Parmar Pharma and General Stores' until 25.04.2020, however the same was surrender in the name of 'Govandi Pharma' which is Applicant's nephew's company. Hence he would submit that Applicant has not indulged in any illegal offence under the NDPS Act.

6.5. He would submit that Applicant has deep roots in Society. He would submit that Applicant is arrested on 14.06.2023 and he is incarcerated for the past 1 year 9 months and 10 days. 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 near future is doubtful. Hence he would urge the Court to allow the Bail Application No. 703 of 2025.

6.6. He would submit that Accused No. 3 being the main supplier of the alleged contraband to the Applicant has been granted bail by this Court by order dated 24.01.2025. Hence he would urge the Court to consider Applicant – Accused No.1's case on the ground of parity.

7. Mr. Gogavale, learned Advocate for Applicant – Accused No. 4 would submit that Applicant is falsely implicated in the present crime, he was subsequently arrested on 23.06.2023 i.e. 9 days after the alleged incident. He would submit that Applicant was indicted solely on the basis of Accused No.3's statement recorded during investigation. He would submit that Applicant has no nexus with Accused Nos. 1 and 2. He would submit that on perusal of the record it is seen that Applicant had merely assisted Accused No.3 in opening a bank Account with Bank of Baroda which is affirmed by the statement of Rajesh Ramaji recorded on 23.06.2023 appended at page No. 162. He would submit that Applicant further facilitated a rental space for Accused No.3 for running his Pharma business which is affirmed by statement of Rishab Rajkaumar Singh – landlord of the rent premises

recorded on 22.06.2023 appended at page No. 171. Hence he would submit that mere assistance in opening a bank account and facilitation of rental premises does not constitute a crime under the NDPS Act.

7.1. He would submit that Applicant – Accused No. 4 is not a supplier, buyer, distributor or transporter in the alleged crime. He would submit that there is no substantial evidence to show his involvement in the alleged crime as there is no recovery at the instance of the Applicant. He would submit that prosecution places reliance on the statement of co-accused No.3 recorded under Section 67 of the NDPS Act, which is inadmissible in evidence and there is no evidence to corroborate the same is placed on record which makes the prosecution case highly questionable.

7.2. He would submit that Applicant – Accused No.4 has deep roots in Society and has no criminal antecedents. He would submit that Applicant is arrested on 23.06.2023 and he is incarcerated for the past 1 year and 9 months. He would submit that investigation is completed chargesheet is filed, commencement and completion of trial in near future is doubtful. Hence he would urge the Court to allow the Bail Application No. 4148 of 2024..

7.3. In support of his aforementioned submissions, he has referred to and relied upon the following decisions of this Court:-

- i. Shivraj Gorakh Satpute Vs. The State of Maharashtra¹*
- ii. Bharat Pukhraj Chaudhary Vs. The State of Maharashtra and Anr.²*
- iii. Mohd. Salman Salim Shekha Vs. The State of Maharashtra³*
- iv. Chandrabhan Janardhan Yadav Vs. The State of Maharashtra⁴*

8. Mr. Karmakar, learned APP for Respondent – State would vehemently oppose the submissions of Advocates for Applicants. He would submit that the contraband seized in question is above commercial quantity and therefore indictment of Applicants and their roles in the crime are clearly spelt out. He would submit that Applicant – Accused No. 1 was found in conscious possession of the alleged contraband and subsequently at his instance further recovery was made 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 there are financial money trails between the Accused No.1 and ‘Well Done Pharma’ even after cancellation of the licence. Hence he would submit that Applicant involved himself in the said transactions which is *prima facie* illegal.

8.1. He would submit that involvement of Applicant – Accused No.4 is established during investigation. He would submit that Accused No.4 voluntarily played a crucial role by assisting Accused

1 Bail Application No. 2865 of 2022 decided on 15.09.2023

2 Cri. Writ Petition No. 3604 of 2024 decided on 25.10.2024

3 Bail Application No. 4579 of 2024 decided on 16.01.2025

4 Bail Application No. 2254 of 2024 decided on 04.03.2025

No.3 in opening bank accounts, facilitating rental space and assisted in wholesale distributorship and hence engaged in sale of cough syrup containing Codine Phosphate illegally. He would submit that as commercial quantity of contraband is recovered from the Applicants the provisions of Section 29 is invoked in the chargesheet and also the rigours of Section 37 will apply to the present case. Hence he would urge the Court to reject the Applications.

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

10. On perusal of record it is seen that Applicant – Accused No. 1 in Bail Applicant No. 703 of 2025 was apprehended at the time of patrolling however, *prima facie*, there is a clear discrepancy observed on the face of record. Section 52A(3) contemplates allowing the Application by Magistrate by issuing the Certificate in Form 5 as per Rule 8 and 18. 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 is seen it is in continuity with the Inventory panchanama itself and the Application is missing rather Form 5 is missing. The certificate should also certify the correctness of the enclosed inventory, which is missing hence if the mandatory requirement prescribed under the NDPS Rules of 2022 are not complied with, it *prima facie* vitiates the seizure which is fatal to the

prosecution case. On perusal of Inventory Panchanam appended at page No. 94 it is *prima facie* seen that photographs of the contraband is absent rather the mandatory procedure laid down under Section 52A (b) is completely omitted by the prosecution for reasons best known to them.

10.1. *Prima facie* it seen that raid conducted at the godown on 16.06.2023 in Accused No.1's case has taken place between sunset and sunrise, without a warrant or authorization. Thus, *prima facie*, there is clear violation of the mandatory provisions of Section 42 of the NDPS Act which casts a doubt on the seizure and prosecution case. Supreme Court in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police* ⁵ has held that while considering violation of Section 42 and relevance thereof compliance of Section 42 is mandatory and it is relevant fact required to be considered while considering a Bail Application.

10.2. Merely alleging that amounts were paid by Accused No.1 in the bank account of 'Well Done Pharma' is not enough for consideration at this stage. It can be proved in trial. It is *prima facie* seen that no investigation is done in regard to Recare Pharma which allegedly dispatched 40 boxes of alleged contraband to Applicant. However lack of investigation as observed and non-compliance of mandatory provisions of Sections 42 and 52A along with NDPS Rules,

⁵ (2004) 12 SCC 266

2022 do not persuade me to consider the case of prosecution.

10.3. However, the fundamental principle, upon which the whole structure of Criminal Jurisprudence is based, is that burden of proving every essential ingredient of the offence lies upon the prosecution and the accused is presumed to be innocent till the offence is proved against him beyond all reasonable doubts. However in the present case it is seen Applicant has no criminal antecedents and he is incarcerated for almost two years, investigation being completed, chargesheet being filed and commencement and completion of trial in near foreseeable future being doubtful also further persuades me to consider Applicant's case.

11. That apart in the case of Applicant – Accused No. 4, it is seen that *prima facie* no direct evidence is placed on record against him. *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 do not draw any inference of Applicant's involvement in the crime. It is seen that Applicant - Accused No.4 does not have any criminal antecedents and *prima facie* no recovery of any contraband is made at the instance of Applicant- Accused No.4 which further persuades me to consider Applicant's case.

11.1. Next, *prima facie* it is seen that he is indicted solely on the

basis of the statement of the co-accused No.3 recorded under Section 67 of the NDPS which are inadmissible in law as such statements are hit by Section 25 of the Indian Evidence Act, 1872.

12. In the case of *Vikramjit Singh Vs. Narcotics Control Bureau*⁶ the Delhi High Court found no admissible evidence linking Applicant directly to the contraband. It noted that disclosure statement of the person from whose house the drugs were recovered did not implicate the Applicant and was thus inadmissible under law as such a confession is hit by Section 25 of Indian Evidence Act, 1872.

13. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*⁷ Court held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

⁶ BA No. 4268 of 2024 decided on 14.01.2025

⁷ (2021) 4 SCC 1

14. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*⁸ the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

15. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*⁹ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

64. ***

65. ***

66. ***

⁸ 2023 SCC OnLine 135

⁹ (2023) SCC OnLine Del 134

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon^{ble} Court in *State v. Navjot Sandhu @ Afsan Guru* CrI. A. No. 80/2003 wherein this Hon^{ble} Court, after placing reliance on *Pulukuri Kottaya and Ors v. The King-Emperor* 1946 SCC OnLine PC 49, and several other judgments of the Hon^{ble} Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.
2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.
3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.
4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.
5. Only such portion of the information as is distinctly connected with the said discovery is admissible.
6. The discovery of the fact must relate to the commission of some offence.”

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a “new fact” thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence.”

16. In the case of *State Vs. Pallulabid Ahmad Arimutta*¹⁰, the Supreme Court held that CDR details of the some of the accused or allegations of tampering of evidence by accused is an aspect that can

¹⁰ SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

be examined at the stage of trial. Hence statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

17. In the following decisions of the Supreme Court and various High Courts concerning such detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Courts have in the backdrop of the aforementioned propositions exercised its unfettered jurisdiction and discretion in releasing an undertrial on bail on account of long incarceration by using its discretionary powers.

18. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*¹¹ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

19. In the case of *Babor Ali Mondal Vs. State of West Bengal*¹² the Supreme Court considering the incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year and 4 months.

20. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*¹³ the Supreme Court considering long incarceration of an undertrial-

¹¹ 2022 SCC OnLine SC 2068

¹² Criminal Appeal No. 3349 of 2024

¹³ Cri. Appeal No.1204 of 2024

accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of the alleged contraband poppy straw.

21. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*¹⁴ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted him bail who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

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

23. In the above *prima facie* facts and circumstances of the present case the Applicants before me have made out a case for bail. In the absence of criminal antecedents, co-accused No. 3 having being released on bail by this Court persuades me to consider Applicants' case on the ground of parity also. Investigation being completed and

¹⁴ BA No.713 of 2024 decided on 20.01.2025

chargesheet being filed and commencement and completion of trial in the near foreseeable future being doubtful entitles the Applicants for grant of bail

24. The Bail Applications stand allowed on the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount;
- (ii) Applicants are permitted to furnish provisional cash bail of Rs.25,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after their release which shall be accepted by the Trial Court. Applicants shall provide sureties as directed;
- (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 Monday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Monday of the said month falls on a holiday and / or non Court working

day, the Applicants shall mark their 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;
- (vii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) Before their actual release from jail, Applicants shall furnish their address where they proposes to reside after their release from jail, to the concerned Police Station and also to the trial Court; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

25. 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.

26. Bail Application No.4148 of 2024 and Bail Application No.703 of 2025 are allowed and disposed.

[MILIND N. JADHAV, J.]

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