

Ajay

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

BAIL APPLICATION NO. 4250 OF 2024

Shams Tabrej Mehboob Badshah Sayyed @	Applicant /
Shams Tabrej Mehboob Badshah Sayyed	.. Accused
Versus	
State of Maharashtra	.. Respondent

-
- Mr. Keshav Chavan a/w Ms. Anita Marbhad, Advocates for the Applicant.
 - Mr. Suryakanta A. Karmakar, APP for Respondent – State.
 - PSI – S.D. Patil, Shivaji Nagar Police Station - Present.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 20, 2025

P. C.:

1. Heard Mr. Chavan, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State. Perused the record.
2. This Application is filed for bail by Accused No.1- Applicant in connection with C.R.No.636 of 2023 (now Special Case. 206/2024) registered with Shivaji Nagar Police Station, Mumbai, for offences punishable under Sections 8(c) r/w Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).
3. Mr. Chavan learned Advocate appearing for Applicant would at the outset submit that Applicant is arrested since 20th July, 2023 for about 18 months. He would submit that during a chance recovery the Complainant – Police Constable approached the

suspicious movements of two accused standing near their scooter when the police approached them the pillion rider ran away and Applicant was confronted.

3.1. The police recovered 12 bottles of 100 ml each containing Chlorpheniramine Maleate and Codeine Phosphate syrup from the Applicant and he was arrested.

3.2. My attention is drawn to the statements of the witnesses which is appended from Page Nos.60 to 74 and the FIR registered which is appended at Page Nos.77 to 81 wherein it is stated that the alleged contraband seized from the Applicant are 12 bottles of Codeine Phosphate Chlorpheniramine Maleate syrup manufactured by CB Health Care, village Messa, Tibba, Tehsil. Nalagarh, Dist. Solan (Himachal Pradesh).

3.3. He has drawn my attention to Page Nos.51 to 58 which is the inventory panchnama of alleged contraband made under Section 52A(3) of the NDPS Act on the basis of the seized documents and seized goods related to the case. This certification is under the seal of the Magistrate 05.10.2023 and is appended at page No.49 below the inventory panchnama. However the alleged contraband which has been taken cognizance of by the Magistrate when seen shows that 12

bottles of the Codeine Phosphate syrup which are seized are manufactured by a company called 'WE CARE'.

4. In order to ascertain this issue and submission, I have referred to the prosecution's case file where the inventory panchnama of the alleged contraband has appended the coloured photographs of said alleged contraband certified by the Magistrate under his certification which clearly show that the alleged contraband is manufactured by 'WE CARE' Laboratory and not by 'CB Health Care' which is the prosecution's case all throughout.

5. That apart, according to prosecution the alleged contraband was recovered in two places namely 10 bottles of the syrup were recovered from the dicky of the scooter and it is alleged that 1 bottle was carried in the right pocket of the hoodie and 1 bottle in the left pocket.

6. According to Applicant he is not the owner of the scooter and therefore, when he was asked to open the dicky of the scooter and the 10 bottles of the alleged contraband were found there in it was the duty of the prosecution to have proceeded with the investigation in that direction under Section 42 rather than determine that the said contraband belonged to the Applicant. This is because it is Applicant's case that the said contraband did not belong to him.

7. Mr. Karmakar, learned APP would vehemently contend that the quantity of contraband is commercial quantity and therefore the Applicant cannot be given any benefit of doubt.

8. I have heard the learned Advocates and the learned APP and perused the record. The dichotomy in the inventory panchnama of showing that the seized contraband is manufactured by 'WE CARE' laboratory as against the prosecution's case that the seized contraband was manufactured by 'CB Health Care' is clearly evident on the face of record when the prosecution file is seen. Thus *prima facie* the inventory panchnama is contrary to the FIR in question.

9. Record shows that the inventory panchnama made on 05.10.2023 is after a period of more than two and a half months. Though in view of the recent decision of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Kashif*** in Criminal Appeal No.5544 of 2024 decided on 20.12.2024, delay or procedural irregularity committed in search or seizure or investigation would not make the entire evidence inadmissible, still what is stated in the FIR should *prima facie* correspond with the contents of the inventory panchnama. In the present case is seen that the certificate and seal issued by the Magistrate *qua* the alleged contraband which can be seen with the naked eye does not correspond to the prosecution case in the FIR. The coloured photographs which are certified in respect of

the alleged contraband i.e. Codeine Phosphate bottles are manufactured by 'WE CARE' laboratories and not by 'CB Health Care' as stated in the FIR and the entire record of the case.

10. It is the prosecution case, as per pancha witnesses that the entire contraband was retrieved from the dicky of the scooter. If that is the case then the mandate of Sections 42 and 50 would apply to the vehicle and only Section 50 would be applicable to the personal search and not to search of the vehicle in question. It is seen as per prosecution case that infact nothing is recovered from the person of the Applicant but at one place it is stated that one bottle was in the left pocket and one bottle in the right pocket of his hoodie and 10 bottles were in the dicky of the scooter.

11. Applicant is not having any criminal antecedents and he is a resident of Mumbai.

12. Though with respect to the quantity seized the learned APP has placed before me a decision of Supreme Court in the case of *Hira Singh and Anr. Vs. Union of India and Anr.*¹ stating question relating to the rate of purity of the seized drug which is decisive for determining the quantum of sentence regarding small, intermediary or commercial quantity and whether the quantity of the neutral substance has to be taken into account for the purpose of determining

1 (2020) 20 SCC 272

quantity with respect to the quantum of punishment the same has been decided by the larger bench of the Supreme Court in the above case. However if only 2 bottles were recovered from the Applicant then the quantity recovered from his person would be 200 grams only which is less than the commercial quantity. This is because the other 10 bottles are recovered from the dickey of the scooter and not his person (body). Hence in view of the above dichotomy which is *prima facie* observed, the Applicant deserves to be given the benefit of doubt.

13. In view of the above observations, in my opinion, Applicant deserves to be released on bail on the following conditions:-

ORDER

- (i) Applicant – Shams Tabrej Mehboob Badshah Sayyed @ Shams Tabrej Mehboob Badshah Sayyed is directed to be released on bail on furnishing PR. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two surety of the like amount;
- (ii) Applicant shall not influence any witness or tamper with the evidence in any manner;
- (iii) Applicant shall attend interrogation if called for by the Investigating Officer since chargesheet is already filed;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all hearing

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 Trial Court; He shall deposit his passport with the Trial Court within one week of his release from jail;
- (vi) Applicant shall keep the Investigating officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (vii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

14. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

15. Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay