

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4277 OF 2024

Paresh Parasmal Jain

.. Applicant

Versus

The State of Maharashtra

.. Respondent

-
- Mr. Raj L. Kamble a/w. Mr. Bhosale and Mr. Pankaj Dhotre, Advocates for Applicant.
 - Ms. Ganapathy, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 22, 2025.

P.C.:

1. Heard Mr. Kamble, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent - State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.301 of 2023 registered with Kasarwadavali Police Station for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). First Information Report (FIR) was filed on 09.09.2023. Applicant is arraigned as Accused No.3 and is in incarceration since 07.10.2023 i.e. for 1 year, 6 months and 16 days pending trial.

3. Briefly stated prosecution case is that on 09.09.2023 at 14:20 hours Accused No.1 – Amjad Iqbal Pathan of YR enterprises was apprehended by the prosecution in possession of 1259 bottles of Codeine Phosphate & Triprolidine Hydrochloride Syrup, Zebigold Cough Syrup 100 ml. It is prosecution case that Applicant alongwith other co-accused obtained the said Codeine Phosphate Syrup Bottles and Alprazolam tablets from two pharmaceutical companies namely ‘New Mahavir Medical’ and ‘New Shraddha Medical’ for selling them illegally in the market. It is alleged that Applicant through New Mahavir Medical and co-accused Chhaganlal Somaram Gachi @ Sanju Modi through his wife’s firm namely ‘Kistal Agency’ obtained Codeine Phosphate Syrup bottles for sale illegally. According to prosecution, both these firms had valid licence for distribution of the two drugs. It is prosecution case that there are several inter se transactions of money exchanged between Applicant and co-accused Chhaganlal Somaram Gachi @ Sanju Modi and their two firms / agencies. It is alleged that they both transferred funds to a company namely Captab Biotech for procuring the said Codeine Phosphate Syrup bottles.

4. Mr. Kamble, learned Advocate would at the outset submit that this Court has granted bail to Accused No.1 today whose Bail Application No.4659 of 2024 which was listed at serial No.919 on today’s supplementary board on the ground of transgression of mandatory provisions of Section 42 of the NDPS Act and long

incarceration of the Applicant therein. He would submit that Accused No.5 has also been enlarged on bail by this Court by order dated 07.01.2025 passed in Bail Application No.2692 of 2024.

4.1. He would submit that Applicant is the distributor who obtained drugs from the manufacturer i.e. Captab Biotech which is a company based in Haryana. Procurement of the drugs by the Company of Applicant is on the basis of delivery invoices and payment of freight charges which are appended to the Application from page No.121 onwards including the Whatsapp chats which *prima facie* refer to the transaction of procurement of the drugs on order, invoices and delivery basis for trading. He would submit that considering the role of the Applicant *vis-a-vis* long incarceration as also transgression of provisions of Section 42 Applicant he may be released on bail.

5. Ms. Ganapathy, learned APP for State has vehemently opposed the Bail Application and would submit that complicity of applicant in the crime is established from the material on record. She would submit that commercial quantity of contraband is seized in the present matter and hence rigours of Section 37 would be applicable to the present Applicant. She would hence pray for rejection of the bail.

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

7. As observed by me in the bail order of Accused No.1, *prima facie* there is transgression of provisions of Section 42 of the NDPS Act as admittedly according to the prosecution case, secret information was received by Police Hawaldar Mr. Sanjay Bhangre who made entry in the diary but he has not intimated the same to the superior Competent Statutory Officer / Authority as required under the NDPS Act. However, on the same day i.e. 09.09.2023 intimation letter is addressed by Senior Police Inspector Mr. Sanjay Shinde to the Assistant Commissioner of Police intimating about receipt of Intelligence Input Information by Police Hawaldar Mr. Sandip Bhangre. The sending of the aforesaid intimation letter by the person who has not received the information is *prima facie* impermissible in law as ruled by this Court in a series of orders while granting bail to Accused persons for transgression of the provisions of Sub-section 2 of Section 42 of the NDPS Act.

8. Supreme Court in the case of ***Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police***¹ has held that while considering violation of Section 42 and relevance thereof compliance of Section 42 is mandatory and it is a relevant fact required to be taken into account while considering a Bail Application.

¹ (2004) 12 SCC 266

9. In the case of *Sanobar Shafiq Khotwal Vs. State of Maharashtra*², this Court has categorically considered a similar situation and has concluded that the person who receives the information must forward it to the superior officer by letter of intimation as contemplated under Section 42(2) of the NDPS Act. The Court held that in the case if the same has not been done by the person who received the information, it would be an infraction of the provisions of Section 42(2) of the NDPS Act as the person forwarding the information would be doing so on the basis of hearsay. This Court has thereafter while considering similar cases has also adverted to the said legal position in the case of *Mehadi Munavar Majid Vs. The State of Maharashtra*³, *Shafi Jahir Shaikh Vs. State of Maharashtra*⁴, *Anil Kailashnath Choursiya Vs. The State of Maharashtra*⁵ and *Hareshwar Dnyaneshwar Patil Vs. The State of Maharashtra*⁶ on the basis of the Supreme Court decision in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*.

10. According to the prosecution case, Applicant's firm possessed a license for procurement and distribution as he is a pharmacist. From the perusal of record of the case it is seen that Applicant has co-operated in the investigation by furnishing all relevant invoices and documents which form part of the charge-sheet and are placed in the

² Cri. Bail Application No. 3337 of 2021 - Decided on 14.10.2022.

³ Cri. Bail Application No. 3493 of 2021 - Decided on 14.10.2022.

⁴ Cri. Bail Application No. 5068 of 2024 - Decided on 04.02.2025.

⁵ Cri. BA. Nos.4148 of 2024 and 703 of 2025 – Decided on 24.03.2025.

⁶ Cri. Bail Application No. 1224 of 2024 0- Decided on 03.04.2025.

Application.

11. Considering the above *prima facie* observations and findings and in view of the above judicial pronouncements coupled with transgression of statutory provisions of Section 42 of the NDPS Act as delineated above and long incarceration for 1 year, 6 months and 16 days pending trial and ignominy of Applicant being incarcerated further and no hope of trial being commenced or for that matter being completed in the near foreseeable future, I am of the opinion that Applicant can be released on bail.

12. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant 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, the Applicant shall mark presence on the next working day;

- (v) Applicant 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 he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence 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.

13. 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.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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