

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4280 OF 2024**

Siraj Rashid Khan	...Applicant
Versus	
State Of Maharashtra	...Respondent

Ms. Ashwinii Achari *a/w Anish Pereira i/b Taraq Sayed, for the Applicant.*

Ms. Megha S. Bajoria, *APP for the State-Respondent.*

PSI – R. P. Shinde, *Bhivandi Crime, Thane, is present.*

CORAM DR. NEELA GOKHALE, J.
DATED: 15th DECEMBER 2025

PC:-

1. The Applicant seeks his release on bail in connection with C.R. No. 221 of 2023 dated 22nd October 2023 registered with Bhoiwada Police Station, Mumbai for the offences punishable under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “NDPS Act”) and 18(c), 18A, 27(B) and 28A of the Drugs and Cosmetics Act, 1940.

2. There are in all five Accused. Accused Nos. 2, 4 and 5 are enlarged on bail. Accused No.3 is the main Accused and is in custody. The present Applicant is Accused No.1.

3. It is the story of the prosecution that while the police officials were on patrolling duty, they received intelligence from an alert citizen that one person was in a *Gala* containing a huge quantity of bottles of cough syrup containing codeine. Thus, the police party proceeded to the said location. They found the Applicant present in the said *Gala*. The presence of the Applicant in the *Gala* is suspicious since the shutters were down and it was around 2:30 a.m. on that day. After following the due procedures and compliance under the NDPS Act, it was found that the *Gala* contained 4,000 bottles of cough syrup containing codeine. The Applicant found in the premises of the *Gala* was arrested on 22nd October 2023 pursuant to the FIR registered against him and others.

4. The Applicant made an application seeking bail before the Additional Sessions Judge, Bhiwandi. However, by order

dated 5th September 2024, the said application was rejected. Hence, the Applicant is before this Court for the relief as prayed.

5. Ms. Ashwinii Achari, learned Counsel for the Applicant, submits that there is no compliance under Section 42 of the NDPS Act. She submits that till date, the CA certificate has not been received. She also submits that the recording the presence of the Applicant in the *Gala* is also suspicious since no information was forwarded to the superior officer. She states that the Applicant Nos. 2, 4 and 5 have also been enlarged on bail and on the principle of parity, the present Applicant also be enlarged on bail.

6. Per contra, Ms. Megha Bajoria, learned APP, resists the Bail Application. She stated that the findings of this Court in the bail application of co-accused is not applicable to the facts of the present Applicant, since at the time of passing of that order, the ground of non-compliance of Section 52A of the NDPS Act was not made before the Magistrate and hence, this

Court while granting bail to co-accused held that there was nothing to indicate that samples drawn from the bottles were sent to chemical analysis or that any application under Section 52A of the Act was moved before the concerned Magistrate.

7. She pointed to the noting in the station diary which records the information note and she stated that this is a compliance under Section 42 of the NDPS Act. As far as the presence of the Applicant in the *Gala* is concerned, notice under Section 50 of the NDPS Act was given to him and he had permitted the police to search the premises. Hence, she prays that the Bail Application be rejected.

8. I have heard learned Counsel appearing for the respective parties and perused the record with their assistance.

9. I have also gone through the order dated 28th November 2024 passed by a Co-ordinate Bench of this Court, wherein the Applicant No. 4 was released on bail on the ground that

the sampling was done only by the Drug Inspector under the Food and Drugs Act and not under the NDPS Act. Be that as it may, as Ms. Bajoria has stated, now the samples are drawn and Section 52A application is moved before the Magistrate. However, admittedly, the CA certificate is not yet received. The Applicant is in custody for more than two years. The compliance under Section 42 of the NDPS Act has also not been made. There are no antecedents against the present Applicant. There is reasonable ground to believe that the Applicant has not committed the offence and he is not likely to repeat the same in the future.

10. In these circumstances, I am inclined to enlarge the Applicant on bail and it is ordered as under:

ORDER

i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;

ii) The Applicant shall attend the Trial Court concerned on each and every date as directed, till the conclusion of the trial, save and except if the Applicant is exempted from appearance by orders of the Trial Court.

iii) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station, if any;

iv) The Applicant shall not leave India, without permission of the trial Court;

v) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vi) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and / or change of residence or mobile details, if any, from

time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vii) The Applicant to co-operate with the conduct of the trial;

viii) Any infraction of the aforesaid conditions shall entail cancellation of bail.

11. Application is allowed in the above terms and is accordingly disposed of.

12. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(Dr. Neela Gokhale, J)