

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4543 OF 2024

Sameer Sarvar Ansari	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

-
- Ms. Zehra Charania a/w. Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Mallika Sharma, Advocates for Applicant.
 - Ms. Shilpa Gajare – Dhumal, APP for Respondent – State.
 - Mr. Khillare, Shivaji Nagar Police Station present.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2025.

P.C.:

1. Heard Ms. Charania, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent – State.

2. Applicant before me is indicted in Crime No.37 of 2024 for the offences punishable under Sections 8(c) and 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”) and he has been arrested on 12.01.2024.

3. Briefly stated while on patrolling duty on the intervening night of 11.01.2024 and 12.01.2024 at about 03:45 a.m. in Govandi area officers of the Respondent apprehended Applicant who disclosed his name as Samir Sarvar Ansari. He was holding a plastic bag containing 11 bottles of Codeine Phosphate and Triprolidine

Hydrochloride Syrup with each bottle containing 100 ml of the contraband. He was apprised about his rights under Section 50 of the NDPS Act. The contraband seized being commercial quantity was sent for further investigation. FIR was registered and two samples were drawn.

4. Ms. Charania, learned Advocate for Applicant has argued that the Applicant is incarcerated for the past 1 year and 15 days. She would submit that names of the panchas are not reflected in the FIR though panchnama was completed at the incident spot itself when Applicant was arrested at about 05:30 a.m. on 12.01.2024.

4.1. She would submit that as per the FIR, panchnama and the statement of witnesses appended at page Nos.39 to 51 of the Application, only the Investigating officer and pancha witnesses have signed and there is no endorsement reference to the signature of Applicant.

4.2. She would submit that till date CA Report is not produced which is mandatorily required to be procured under Rule 6 of the NDPS Rules, 2022 and equally there is no endorsement of denial by Applicant to be searched before the Gazetted Officer and Magistrate in compliance with the provisions of Section 50 of the NDPS Act. Hence she would argue that Applicant be enlarged on bail due to the above lapses.

5. *PER CONTRA*, Ms. Gajare – Dhumal, learned APP for Respondent – State has vehemently objected to the Application and argued that the quantity of contraband in question is above commercial quantity and therefore rigour of Section 37 of the NDPS Act would apply squarely to the present case.

5.1. She would draw my attention to the Applicant's statement appended at page No.53 to argue that Applicant has consciously and knowingly agreed to sell the contraband for earning a commission of Rs.50/- on every bottle sold by him and thus he is alleged to have committed the offences punishable under Sections 8(c) and 22 of the NDPS Act, for which punishment that is provided may extend upto 20 years imprisonment and fine which may extend upto Rs.1 lakh.

5.2. She would submit that the offence committed is therefore of a grievous nature and the said contraband has been recovered from the conscious position of Applicant and there is every possibility that Applicant will indulge in a similar act if released on bail. Hence, she would pray for rejection of the Bail Application.

6. I have heard the submissions made by the learned Advocates and perused the record with their able assistance.

7. Statement of the Applicant has been recorded by the Investigating Officer. It is appended at page No.53 of the Bail Application. Applicant has stated that he received the alleged

contraband from a person called Salman Chikna who promised to give him Rs.50/- per bottle sold as commission.

8. Applicant has stated that he came to know the said supplier Mr. Salman Chikna in the past 3 – 4 months prior to the incident. Applicant, his mother, wife, 3 children and brother are residing in Baiganwadi area, Govandi (West), Mumbai and are having a small unit of manufacturing paper bags which is managed by Applicant alongwith his younger brother. Applicant is a married person having his wife and 3 children who are aged between 3 to 6 years. The prosecution has not investigated the matter any further and investigation is complete.

9. Ms. Gajare – Dhumal, learned APP would argue that the statement made by Applicant regarding involvement of the supplier does not give any adequate details. After taking instructions, she would submit that the said supplier is absconding. If that be the case, then said supplier ought to have been made a wanted accused in the present case which has not been done. Merely resting the case on the arrest of the Applicant is not enough and the prosecution and the Investigating Officer ought to have gone to the root of the matter. I am informed that investigation is complete and charge-sheet is filed.

10. It is seen from the record that Investigating Officer and panchas have signed the statements relating to the seized contraband

without there being any reference to the Applicant therein who is the sole Accused in the present crime. Though Ms. Gajare – Dhumal would vehemently argue rigour of Section 37 of the NDPS Act would apply in the present case, the complicity of the supplier of the alleged contraband has not been investigated, which is *prima facie* evident from the prosecution case itself. The only material placed before me at this stage is the statement of the Applicant which is a confessional statement and solely the staid statement cannot be considered as it is *prima facie* observed that the prosecution case falls short of investigation in the right direction.

11. Though learned APP would also argue that Applicant has 3 antecedents, it is however seen that the 3 antecedents are under Section 379 of the Indian Penal Code, 1860 and none of them are under the NDPS Act. Applicant has satisfied the twin tests contemplated under Section 37 of the NDPS Act. The absence of names of the panchas in the FIR is a serious lacunae and an aspect which concerns the entire material from the stage of execution of the seizure panchnama to the execution of the inventory panchnama and samples being eventually sent for chemical analysis to the concerned laboratory. Till date CA Report is also not made available.

12. In view of the above, Bail Application is therefore allowed on the following terms and conditions:-

- (i) Applicant – Sameer Sarvar Ansari is directed to be immediately released from prison in connection with C.R. No.37 of 2024;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.15,000/- with one surety of the like amount;
- (iii) Applicant shall report to the Investigating Officer at Shivaji Nagar Police Station as and when called by the Investigating Officer;
- (iv) 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;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) 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;

(viii) Applicant shall surrender his passport, if any, with the Trial Court;and

(ix) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

13. Needless to say, violation of any of the aforesaid conditions would make the Applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the Applicant in the present Application and that the Trial Court shall proceed further without being influenced by the observations made in this order.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2025.01.29
19:55:40 +0530