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

BAIL APPLICATION NO.4545 OF 2024

VAIBHAV
RAMESH
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Ansarulla Ajimulla Khan @ Lala

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Viqar Rajguru with Mr. Azeem Khan for the applicant.

Mrs. Mahalakshmi Ganapathy, APP for the respondent-State.

Mr. Amol Kale, PSI, Deonar Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 24, 2025

P.C.:

1. The present application for regular bail has been filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “BNSS”), in connection with NDPS Special Case No. 1459 of 2024, arising out of L.A.C. No. 10 of 2024 registered with Deonar Police Station, for offences punishable under Sections 8(c) and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”).

2. As per the prosecution case, the first informant, one Rahul S. Patil, a police constable attached to Deonar Police Station, posted in the Anti-Terrorist Cell, was on patrolling duty within the

jurisdiction of the said police station along with other staff members. At around 23:40 hours, near the footpath outside Shaheen Hair Cutting Saloon, the police noticed one person holding a black plastic bag and standing in a suspicious manner. Thereafter, two panch witnesses, Ibrahim Hakumulla Khan and Ganesh Ukha Wayre, were called, who agreed to voluntarily act as panchas.

3. Upon completing preliminary formalities, Police Inspector Mr. Khatpe questioned the said person about his name and address. The individual disclosed his name as Ansarulla Azimulla Khan alias Lala, aged 23 years, and provided his residential address. When asked about the contents of the black plastic bag he was carrying, the said person allegedly gave vague and inconsistent answers. Thereafter, PSI Kale opened the bag in the presence of the two panchas. On inspection, the bag was found to contain 11 sealed plastic bottles of Wykarex-CD Cough Linctus, each 100 ml in volume. The labels on the bottles showed that the medicine contained Codeine Phosphate, Chlorpheniramine Maleate, and Sodium Citrate. The packaging bore the manufacturing license number G/25/100, batch number AL-5751, manufacturing date October 2023, expiry September 2025, and a printed MRP of Rs.175/- per bottle. The total value of the 11 bottles was stated to be Rs.1,925/-.

4. Upon chemical analysis of the labels, the investigating officer noted that each bottle contained 10 mg of Codeine Phosphate, a narcotic substance. Thus, the total contraband recovered was 1100 mg of Codeine Phosphate. Thereafter, the recovered material was

repacked in the same black plastic bag, wrapped in a white sack, stitched using white thread, and sealed in the presence of panchas. Seizure labels bearing the signatures of the panchas and PSI Amol Kale, and the official seal reading “Inspector of Police, Deonar P.S.B. BAY”, were affixed.

5. During preliminary inquiry, when the accused was asked whether he held any license or permit to possess the said substance, he responded in the negative. When further questioned about the use and purpose of possessing the contraband, the accused allegedly admitted that the substance is used for intoxication in small quantities, and that he used to sell the same.

6. It is further stated that no other incriminating articles were found from the accused. The Investigating Officer, Mr. Khatpe, asked the accused in Hindi whether he was willing to sign the seizure labels, to which the accused responded in the affirmative and put his signature on the same. The accused was then formally arrested and taken to the Deonar Police Station, and the present First Information Report came to be registered on the basis of the complaint lodged by the first informant.

7. The learned Advocate appearing for the applicant has placed reliance on the judgment of this Court in the case of *Chandrabhan Janardhan Yadav vs. State of Maharashtra*, 2025 SCC OnLine Bom 462. It is submitted that there has been a material procedural lapse on the part of the Investigating Agency inasmuch as Rule 8 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 has not been complied with. It

is pointed out that the inventory panchnama, which is a crucial document in the seizure process, does not contain the certificate in Form 5 as prescribed under the said Rules. According to the learned Advocate, this non-compliance goes to the root of the prosecution case and renders the seizure doubtful and vitiated, entitling the applicant to be released on bail.

8. Per contra, the learned Additional Public Prosecutor has strongly opposed the bail application. She submits that the accused was found in possession of 1,100 milligrams of Codeine Phosphate, which clearly falls under the category of commercial quantity as defined under the NDPS Act. It is submitted that the accused was found carrying 11 sealed bottles of cough syrup, each allegedly containing 100 milligrams of Codeine Phosphate. She further submitted that one co-accused, namely Saphi Rathi, is still absconding and could not be secured by the police. On that ground, the inventory under Section 52A of the NDPS Act came to be conducted subsequently, on 16th March 2024.

9. The learned APP brought to the Court's attention that till the inventory was carried out, the seized contraband was properly preserved in the Police Station storeroom. On 16th March 2024, the Investigating Officer addressed a letter to the jurisdictional Magistrate, requesting initiation of the procedure under Section 52A(2) of the NDPS Act. It is submitted that the inventory panchnama was drawn in the presence of the Magistrate, and the seized contraband was duly produced before him. The inventory report also records that the Magistrate verified the quantity and nature of the contraband, and endorsed the same. Thus, according

to the learned APP, there is no material irregularity in the inventory process.

10. In support of her contention, she placed reliance on the authoritative judgment of the Supreme Court in *Narcotics Control Bureau vs. Kashif*, 2024 SCC OnLine SC 3848. In the said judgment, the Supreme Court has held that sub-section (2) of Section 52A of the NDPS Act lays down the procedure contemplated in sub-section (1), and any lapse or delay in carrying out the procedure is at best a procedural irregularity, which does not per se vitiate the trial, nor does it create an automatic ground for bail. It has further been held that procedural lapses, if any, in the conduct of seizure or investigation, do not render the entire evidence inadmissible, unless it results in prejudice affecting the fairness of the trial.

11. The learned APP further relied on the judgment of the Supreme Court in *Bharat Aambale vs. State of Chhattisgarh*, 2025 SCC OnLine SC 110. In the said decision, it has been reiterated that the procedures laid down under Section 52A of the NDPS Act and the Standing Orders/Rules framed thereunder, are intended to guide the investigating officers to ensure that a fair and transparent process is followed. However, substantial compliance with such procedures is considered sufficient in law. It is not necessary that every procedural step must be complied with in its strictest form unless the non-compliance has led to discrepancies in the physical evidence, thereby making the prosecution's case doubtful. In the absence of such discrepancies, the trial is not liable to be vitiated solely on the ground of procedural non-

compliance.

12. The learned APP, therefore, submitted that there is sufficient prima facie material to indicate the applicant's involvement in the offence, and the investigation has been conducted in accordance with law. The compliance with Section 52A is substantial, and there is no discrepancy in the chain of custody or the nature of the seized contraband. Thus, the bail application deserves to be rejected.

13. I have given my thoughtful consideration to the rival submissions made by the learned Advocate for the applicant and the learned APP for the State. I have also perused the record made available, including the seizure panchnama, inventory report, and other documents annexed with the application.

14. At the outset, it is required to be noted that the applicant has been found in physical possession of 11 sealed bottles of cough syrup, each containing Codeine Phosphate, a narcotic drug regulated under the NDPS Act. The total Codeine content in the bottles is 1,100 mg, which, as per the Notification dated 19.10.2001 issued under the NDPS Act, clearly exceeds the threshold for "commercial quantity", thus attracting the rigors of Section 37 of the NDPS Act.

15. As per Section 37(1)(b), when the quantity involved is commercial, the Court is mandatorily required to record a satisfaction that (i) there are reasonable grounds to believe that the applicant is not guilty of the offence, and (ii) he is not likely to commit any offence while on bail. In the present case, having

regard to the facts on record, I am not in a position to record such satisfaction at this stage. The allegations in the FIR, supported by the statements of panch witnesses and the seizure made at the spot, do make out a prima facie case against the applicant.

16. The main argument advanced on behalf of the applicant is regarding the alleged non-compliance of Rule 8 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, and absence of Form 5 certificate in the inventory panchnama. However, from the material placed on record, it is evident that inventory proceedings were conducted in the presence of the learned Magistrate on 16th March 2024, and the seized contraband was duly produced before him. The weight and contents were verified and recorded by the Magistrate, and the panchnama bears his endorsement.

17. In this context, the observations made by the Supreme Court *Kashif* (supra) assume great significance. In the said judgment, the Apex Court has authoritatively held that Section 52A(2) of the NDPS Act, which deals with the procedure for drawing up an inventory and production of seized narcotic substances before the Magistrate, is procedural in character and not mandatory in the strictest sense.

18. The Court has clarified that if the contraband is safely seized, properly preserved, and duly produced before the Magistrate, then minor lapses or delays in strictly following the procedure under Section 52A would not render the seizure illegal, nor would such procedural irregularities, by themselves, vitiate the trial or

invalidate the prosecution case. The Court further observed that such lapses are curable and would not furnish an independent or automatic ground for grant of bail to the accused, especially in cases where the quantity involved is commercial and the prima facie evidence supports the charge.

19. The underlying rationale is that the purpose of Section 52A is to ensure authenticity, transparency, and continuity of evidence with respect to the seized narcotic material. So long as the seizure is carried out in the presence of panchas, the material is sealed, stored, and produced before the Magistrate, and the inventory reflects the weight, quantity, and description of the contraband, then mere non-submission of a particular form or delay in completing the inventory proceedings would not justify granting bail, nor would it automatically lead to exclusion of the evidence collected by the Investigating Officer.

20. Therefore, in view of the settled legal position, the argument of the applicant that the absence of Form 5 certificate under the NDPS Rules, 2022, amounts to fatal non-compliance cannot be accepted. Such a contention does not hold ground, especially when the record indicates that the inventory was drawn in the presence of the Magistrate, and the seized material was physically produced, examined, and verified by him. Hence, in light of the binding dicta laid down in *Kashif* (supra), no case for bail is made out merely on the basis of a technical irregularity, which is not shown to have caused any prejudice to the applicant or disrupted the chain of custody of the narcotic substance.

21. Similarly, in the case of *Bharat Aambale v. State of Chhattisgarh*, 2025 SCC OnLine SC 110, the Supreme Court has once again emphasized that what the law requires under Section 52A of the NDPS Act is not rigid or technical compliance with each and every procedural formality, but rather substantial compliance that ensures fairness and integrity of the process.

22. In this judgment, the Apex Court has made it clear that the primary objective of Section 52A and the Standing Orders or Rules framed under it is to secure the integrity of the seized narcotic substance and to preserve evidence in a manner that instills confidence in the judicial process. Therefore, if the essential requirements, such as proper seizure, sealing, storage, and production before the Magistrate, have been fulfilled, then mere absence of a Form 5 certificate would not vitiate the seizure or render the recovery illegal. The Court went on to observe that unless the accused is able to demonstrate that such procedural lapse has led to a discrepancy in the seized material, or that the chain of custody has been broken, or that the seized contraband has been tampered with, mere technical violations or omissions cannot be treated as fatal to the prosecution. The emphasis is on ensuring the authenticity and continuity of evidence.

23. In the present case, the inventory panchnama was drawn up in the presence of the learned Magistrate, who verified the physical quantity, appearance, and description of the contraband. There is no material placed on record by the applicant to suggest that there was any tampering with the seized bottles, or that the seals were broken, or that there was any interruption in the chain

of custody from the time of seizure till production before the Magistrate.

24. In such circumstances, the mere non-enclosure of Form 5 along with the inventory panchnama, by itself, cannot be treated as a ground to hold that the seizure was illegal. Nor can it be used as a valid ground to seek bail, particularly when the material on record prima facie supports the prosecution's case and the quantity of the contraband is commercial.

25. Therefore, in view of the principles laid down in *Bharat Aambale* (supra), and in the absence of any prejudice or doubt shown by the applicant regarding the handling of the seized contraband, no benefit can be extended to the applicant solely on the ground of alleged procedural lapse in not annexing Form 5.

26. Similarly, in *Bharat Aambale* (supra), the Apex Court has held that substantial compliance with the procedure under Section 52A and related Standing Orders is sufficient. Mere non-filing of a Form 5 certificate, if the inventory is otherwise verified by the Magistrate, does not nullify the seizure or make the recovery illegal. There is no material brought on record by the applicant to suggest any tampering, discrepancy, or break in the chain of custody of the contraband.

27. In the facts of the present case, it is material to consider whether the decision of this Court in *Chandrabhan Janardhan Yadav* (supra), applies in the facts of the present case. On a close reading of the decision in *Chandrabhan Janardhan Yadav* (supra), it is evident that the learned Single Judge granted bail primarily

on the ground that the prosecution had failed to comply with Rule 8 read with Rule 18(1) of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, as Form 5, the mandatory format for the inventory certification under Section 52A(3) of the NDPS Act, was not used. The Court observed that the inventory certificate issued by the Magistrate was appended to the panchnama itself and not preceded by an application in the prescribed Form 5. The Court treated this lapse as a material procedural irregularity which, along with other factual circumstances, cumulatively justified the grant of bail.

28. However, in the present case, the facts are materially distinguishable. Here, it is undisputed that the seized narcotic contraband was produced before the Magistrate, and the inventory was drawn and certified in the presence of the Magistrate. Although the Form 5 certificate may not have been physically appended in the prescribed format, there is no allegation of tampering, substitution, or break in chain of custody. The contraband was securely sealed, weighed, labelled, and identified. Moreover, the applicant has admitted to selling the substance for intoxication, and there is direct recovery of commercial quantity from his possession, which materially strengthens the prosecution's case.

29. Importantly, both *Kashif* and *Bharat Aambale* (supra) make it clear that Section 52A is procedural, and substantial compliance is sufficient. The Supreme Court has expressly held that mere delay or deviation from the formalities of certification or inventory format would not vitiate the prosecution, unless it results in

prejudice to the accused or creates serious doubt about the identity or integrity of the contraband.

30. Therefore, unlike in *Chandrabhan Yadav*, the present case does not suffer from such foundational defects. The applicant was apprehended red-handed, and the recovery was properly documented and verified in the presence of panchas and the Magistrate. The principle of substantial compliance, as laid down by the Supreme Court in *Kashif* and *Bharat Aambale*, clearly applies and governs the field. Hence, this Court finds that this Court's view in *Chandrabhan Yadav*, cannot be applied universally, and is not inconsistent, but must be understood in the context of its own facts. In the present matter, the prosecution has achieved substantial compliance with Section 52A, and no prejudice is shown to be caused to the applicant. Accordingly, reliance placed on *Chandrabhan Janardhan Yadav* by the applicant is misplaced, and does not advance his case for grant of bail in the facts of the present matter.

31. It is further to be noted that Codeine-based cough syrup is often misused as an intoxicant, and its illicit sale and consumption is a matter of serious public concern. The applicant, when questioned at the time of seizure, admitted that he used to sell the substance for intoxication, and had no license or authorization for possessing the same. These admissions, coupled with the recovery of contraband in sealed condition, lend prima facie credibility to the prosecution case.

32. Taking into account the totality of circumstances, the

commercial quantity involved, the admissible procedural compliance with Section 52A, and the authoritative pronouncements of the Supreme Court, this Court is of the opinion that the applicant has not made out a case for grant of bail. The statutory bar under Section 37 of the NDPS Act applies squarely, and the Court cannot form an opinion at this stage that the applicant is not guilty or that he is not likely to re-offend if released on bail.

33. Accordingly, the application being devoid of merit, deserves to be rejected.

34. The Bail Application stands rejected.

(AMIT BORKAR, J.)