

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4742 OF 2024

Kishankumar Premkumar Gupta

Applicant

.. (Accused No. 1)

Versus

The State of Maharashtra

.. Respondent

.....

- Ms. Leena Patil, Advocate (appointed) for Applicant
- Mr. Dinesh J. Haldankar, APP for Respondent - State

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 22, 2025

P. C.:

1. Heard Ms. Patil, learned Advocate for Applicant and Mr. Haldankar, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS") in connection with C.R. No. 03/2021 registered with Nodal Cyber Police Station, Mumbai for the offences punishable under Sections 27 of the Drugs and Cosmetics Act, 1945; Sections 469, 420, 476, 482, 336 and 120-B of the Indian Penal Code, 1860 (for short "IPC"); Sections 66(c) and (d) of the Information Technology Act, 2000 (for short "IT Act") and Section 102 of the Trade Marks Act, 1999. Applicant is arrested on 12.08.2021 and as on today

he is in incarceration for the period of 3 years 8 months & 10 days pending trial.

3. On 27.03.2025 after hearing learned Advocates appearing for the parties, following order came to be passed:-

"1. Heard Ms. Patil, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No.03 of 2021 registered with Nodal Cyber Police Station for the offences punishable under Sections 27 of the Drugs and Cosmetics Act, 1945; Sections 469, 420, 476, 482, 336 and 120-B of the Indian Penal Code, 1860; Sections 66(c) and (d) of the Information Technology Act, 2000 and Section 102 of the Trade Marks Act, 1999.

3. Applicant is incarcerated since 12.08.2021 in the present crime. Learned Advocate for the Applicant informs the Court that the case has been merely committed to the Trial Court / Sessions Court and thereafter it is at a complete standstill. Allegations against the Applicant are that during the COVID-19 pandemic period the Applicant falsely claimed to be an official distributor of CIPLA Company opened WhatsApp profiles and portrayed himself to be a distributor and sold the drug Remdesivir.

4. Ms. Patil, learned Advocate for Applicant would persuade the Court to consider that on prima facie consideration the invocation of the provisions of Section 26 of the Drugs and Cosmetics Act, 1945 would not be applicable for indicting the Applicant. She would submit that the charge-sheet in that case would support the submissions made by her. She would persuade the Court that if at all the case of the prosecution is taken to highest, it would be a case of cheating whereas even considering the offences under the Information Technology Act and Trade Marks Act, the maximum punishment for the same goes upto 7 years. She would therefore persuade the Court to consider the fact that Applicant is in incarceration for the past 3 years, 7 months and 15 days pending trial and the probability of the trial not commencing or completing in the near foreseeable future would entitle the Applicant for grant of bail.

5. She would submit that Applicant is / was a taxi driver by profession and the real perpetrator of the crime who has siphoned off the amount during the time of sale of the said drugs Remdesivir during COVID-19 period is a person called Vijay Benedict who despite having been investigated upon by the prosecution by issuing notice under Section 41A of the Code of Criminal Procedure, 1973 has not cooperated with the investigation, rather he is absconding.

6. *The aforesaid submissions made by the learned Advocate for Applicant persuades the Court to consider the Application for bail considering his long incarceration.*

7. *List the Bail Application on Board on 08th April, 2025 at 02:30 p.m."*

4. The indictment of Applicant is under the provisions of the Drugs and Cosmetics Act for impersonation by creating a WhatsApp profile and a fabricated letterhead to claim himself to be an authorized distributor of CIPLA Company for distribution of the drug Remdesivir and having thereby exploited the situational crisis that arose during the Covid-19 pandemic period.

5. *Prima facie* record of case shows that prosecution has not proceeded against the real culprit i.e. a person called Vijay Benedict who received the funds and money despite having been issued notice under Section 41-A of the Cr.PC. seeking investigation. Applicant before me is a taxi driver by profession having been incarcerated for more than 3 years 8 months and 10 days. Considering the prosecution case and the role of Applicant and his long incarceration pending trial and reasons recorded in the order dated 27.03.2025, Applicant has made out a *prima facie* case for grant of bail in the facts of the present case. 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. 5,000/- 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.

6. 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.

7. This Court appreciates the assistance rendered by Leena Patil, learned Advocate appointed through the Legal Aid to espouse the cause of the Applicant. Her fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.04.22
19:37:24 +0530