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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4759 OF 2024

Aman Sunil Singh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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GANESH
KULKARNI

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Mr. S.K. Kamble with Mr. Rohidas Bhor, & Ms. Manisha
Jadhav for the applicant.

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

CORAM : AMIT BORKAR, J.

DATED : AUGUST 11, 2025

P.C.:

1. By this application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking regular bail in connection with Crime Register No.670 of 2023 registered with Shantinagar Police Station. The applicant is facing charges under Sections 328, 372, and 276 of the Indian Penal Code, 1860, Sections 18(a), 18(c), 27(b)(ii), and 27(d) of the Drugs and Cosmetics Act, 1940, and Sections 8(c), 21, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short).

2. The case of the prosecution, in brief, is that on 22nd August 2023, the police received secret information that the applicant

would arrive opposite Saibaba Mandir at around 6:00 PM carrying prohibited contraband. Acting on this information, a trap was laid. The applicant was identified by the informer, and the auto-rickshaw used by him was intercepted. Upon searching in the presence of two panch witnesses and a Food and Drug Inspector, the authorities recovered six boxes containing 960 bottles of syrup and 50 strips of tablets branded as "Alpratan-1". The syrup was found to contain codeine phosphate and chlorpheniramine maleate, and the tablets contained alprazolam. During the course of investigation, it came to light that one Gurfan had allegedly supplied these goods to the applicant for the purpose of delivery. The applicant was taken into custody on 1st November 2023.

3. Learned advocate for the applicant has contended that the applicant has been falsely implicated in the present matter. It is his submission that the applicant, being an auto-rickshaw driver, was merely transporting the goods in good faith as part of his daily work, without having any knowledge about the prohibited nature of the contents. It was further submitted that there was no attempt to conceal the goods, as the same were being carried in the vehicle during broad daylight and were not hidden under the seat or in any secret compartment. The learned advocate has also pointed out that initially, the police proceeded under the provisions of the Drugs and Cosmetics Act and conducted the seizure panchnama and sampling accordingly. Only thereafter, almost three days later, did they invoke the stringent provisions of the NDPS Act. It is contended that the mandatory safeguards and procedures contemplated under Sections 42, 50, and 52A of the NDPS Act

have not been complied with. In particular, it is submitted that the search was not preceded by a proper authorization and that there was no recovery from the person of the applicant, and hence Section 50 is not applicable. It is argued that mere possession without knowledge or intent does not amount to "conscious possession". It is further submitted that the applicant is the sole earning member of his family and has been in custody since 22nd August 2023. The trial has not yet commenced, and the charge is yet to be framed. Hence, it is prayed that the applicant be released on regular bail.

4. On the other hand, the learned Additional Public Prosecutor has opposed the bail application. She has drawn the Court's attention to the seizure panchnama, which shows that the substances recovered included Alprazolam tablets and cough syrup containing codeine phosphate and chlorpheniramine maleate, both of which are regulated under the Drugs and Cosmetics Act and also fall within the purview of the NDPS Act depending on the quantity and composition. She pointed out that based on prior secret information received by the concerned authorities under the Drugs and Cosmetics Act, a trap was laid and the seizure was accordingly carried out on 22nd August 2023. It is further submitted that once it was found that the seized substances contained narcotic drugs and psychotropic substances beyond the permissible limits, the provisions of the NDPS Act came into play. Regarding the argument on non-compliance of Section 50 of the NDPS Act, the learned APP submitted that no personal search of the applicant was conducted, and therefore, Section 50 has no

application. In support of this proposition, she placed reliance on the judgment of the Supreme Court in *Ranjan Kumar Chadha v. State of Himachal Pradesh*, Criminal Appeal Nos.2239-2240 of 2011, decided on 6th October 2023, where it was held that Section 50 is not attracted in such cases. She further relied upon the observations of the Apex Court in the said judgment highlighting the serious threat posed by drug abuse and trafficking, which not only destroys individuals but also severely impacts the society and economy, and even funds unlawful activities including terrorism. It is, therefore, her submission that considering the fact that the applicant was found in possession of commercial quantity of narcotic substance, the bar under Section 37 of the NDPS Act gets attracted, and no case for grant of bail is made out. She, therefore, prayed for rejection of the bail application.

5. I have carefully considered the rival submissions advanced by the learned Advocate for the applicant and the learned Additional Public Prosecutor. I have also perused the material placed on record, including the FIR, seizure panchnama, and the documents related to chemical analysis.

6. The record prima facie indicates that the applicant was found in possession of a substantial quantity of substances, namely, codeine phosphate syrup and alprazolam tablets, both of which are covered under the NDPS Act when they exceed the permissible quantity. The seizure was effected in the presence of panch witnesses and a Food and Drug Inspector. Although initially the action was taken under the provisions of the Drugs and Cosmetics Act, it is evident that upon chemical analysis and confirmation of

the composition and quantity of the seized substances, the provisions of the NDPS Act came to be invoked.

7. The defence of the applicant that he was unaware of the nature of the substances, and that he was merely acting as a transporter, may be a matter of trial. At this stage, the material on record, particularly the manner in which the contraband was packed and transported in multiple boxes and strips, creates a presumption of knowledge, which shifts the burden on the accused under Section 35 of the NDPS Act. The concept of "conscious possession" under the Act does not merely imply physical custody but also knowledge and control over the substance. In the present case, the fact that the entire material was found in the applicant's vehicle and was in his exclusive control at the time of seizure is sufficient to prima facie suggest conscious possession.

8. As regards the contention raised on behalf of the applicant regarding non-compliance with the procedural safeguards under Sections 42, 50, and 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, it is necessary to examine the applicability and scope of each of these provisions in the factual backdrop of the present case.

9. Section 50 of the NDPS Act mandates that when a person is to be searched, he must be informed of his legal right to be searched in the presence of a Gazetted Officer or a Magistrate. This safeguard is intended to ensure fairness and prevent false implication in cases where narcotics are allegedly found on the body of an accused person. However, it is now well-settled in law

that this requirement applies only when the search is of the person of the accused, and not when the recovery is made from a vehicle, premises, bag, or any other place which is not part of the accused's body.

10. In the present case, the record clearly shows that the contraband substances, namely, bottles of codeine-based syrup and strips of Alprazolam tablets, were recovered from the auto-rickshaw driven by the applicant. There is no allegation or material to suggest that any contraband was recovered from his person or body. Thus, the requirement of informing the accused of his right under Section 50 does not arise in the facts of this case.

11. This legal position has been authoritatively laid down by the Supreme Court in the case of *Ranjan Kumar Chadha v. State of Himachal Pradesh*, Criminal Appeal Nos. 2239–2240 of 2011, decided on 6 October 2023. In that case, the Court reiterated that Section 50 is not attracted where the recovery is made from a bag, container, or vehicle, and not from the person of the accused. The Court emphasized that the scope of Section 50 is restricted to personal search, and its protection cannot be extended to every seizure of narcotic substance made from places or objects associated with the accused.

12. In light of the above settled legal position, and having regard to the nature of the seizure in the present case, this Court finds no merit in the submission that the mandatory provisions of Section 50 have been violated. The search and seizure from the vehicle do not attract the safeguard under Section 50. Therefore, the

contention raised on behalf of the applicant in this regard is liable to be rejected.

13. As regards the contention regarding non-compliance of Section 42 of the NDPS Act, it is necessary to first understand its scope and object. Section 42 deals with situations where the authorised officer receives prior information about the commission of an offence under the NDPS Act and intends to conduct a search of a building, conveyance, or enclosed place, between sunset and sunrise, based on such information. It requires that the information be taken down in writing, and a copy of the same be forwarded to the immediate superior officer, as a safeguard against misuse of power.

14. In the present case, the prosecution has placed reliance on a specific secret information received prior to the incident, to the effect that the applicant would be arriving at a particular location at a particular time with contraband substances. Acting on the said information, the police team laid a trap and intercepted the applicant's auto-rickshaw at around 6:00 PM in a public place, in the presence of panch witnesses and a Food and Drug Inspector.

15. From the record, it is evident that the interception and seizure occurred during day time, and that the place where the trap was laid was an open and public road, not a closed building or enclosed private place. This factual scenario assumes importance because the Supreme Court has consistently drawn a distinction between a search conducted in a public place and a search of a building or enclosed space, as contemplated under

Section 42.

16. In the present case, the seizure of contraband was made from an auto-rickshaw that was parked or moving on a public road. The record does not indicate that the seizure was made inside any private place or enclosed building. Therefore, by applying the ratio laid down in the above decisions, it is clear that the case falls within the ambit of Section 43 of the NDPS Act and not Section 42.

17. Accordingly, the procedural safeguards under Section 42, such as reducing the information in writing and forwarding it to the superior officer, were not mandatorily required to be followed in the present case. The trap and seizure having been carried out in a public place during broad daylight, the contention regarding non-compliance of Section 42 is without merit and deserves to be rejected.

18. Another submission advanced by the learned Advocate for the applicant is that the initial action in the present case was taken under the Drugs and Cosmetics Act, 1940, and that the police had no authority to conduct the search and seizure under the said Act. It is contended that only specialised authorities, such as the Drugs Inspector or the Narcotics Control Bureau (NCB), are empowered to deal with such offences, and therefore, the entire search conducted by the local police is without jurisdiction and in breach of the statutory scheme.

19. This submission, though attractive at first glance, cannot be accepted in the light of the legal position and the facts of the case.

20. It is true that under the Drugs and Cosmetics Act, certain powers for inspection, search, and seizure are conferred upon designated officers such as Drugs Inspectors, appointed under the said Act. However, it must be noted that when the substance seized contains ingredients which are also classified as narcotic drugs or psychotropic substances, the provisions of the NDPS Act are clearly attracted.

21. In the present case, the substances seized, namely, syrup containing Codeine Phosphate and tablets containing Alprazolam, are covered not only under the Drugs and Cosmetics Act, but also under the Schedules to the NDPS Act, depending upon the composition and quantity. Once the chemical analysis revealed that the quantity of the narcotic component exceeded the permissible limit, the case assumed the character of an NDPS offence.

22. As regards the competence of the local police to act under the NDPS Act, there is no absolute bar that only the Narcotics Control Bureau can act. Section 53 of the NDPS Act specifically empowers certain officers of the police department, who are of or above the rank as notified by the Government, to exercise powers of search, seizure, and investigation under the Act. In the present case, the seizure was carried out by a duly authorised police officer in the presence of panch witnesses and a Drugs Inspector, and the provisions of the NDPS Act were invoked only after confirmation of the presence of narcotic substances in the contraband.

23. Moreover, the initial invocation of the Drugs and Cosmetics Act does not nullify the action taken subsequently under the NDPS

Act, if the material recovered is found to contain narcotic or psychotropic substances. It is well-settled that if the facts justify application of the NDPS Act, the police are within their powers to proceed accordingly, irrespective of whether the action was initially under another enactment.

24. Therefore, the contention that only the NCB has power to conduct such seizure, and that the local police are barred from acting under the NDPS Act, is misplaced and unsupported by law. In the present case, there is no material to show that the police officers were acting beyond their jurisdiction or without lawful authority under the NDPS Act.

25. Accordingly, this Court is of the considered view that no illegality or want of jurisdiction can be attributed to the action of the police in seizing the contraband and invoking the provisions of the NDPS Act, once it was confirmed that the seized substances fell within the purview of the said Act.

26. Further, at this stage, there is nothing on record to show that there was any procedural illegality or prejudice caused to the applicant during seizure, sampling or forwarding the samples for analysis. These aspects will be tested at the stage of trial. At the stage of bail, the test under Section 37 of the NDPS Act is twofold: (i) the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence; and (ii) the accused is not likely to commit any offence while on bail. The burden to satisfy both conditions lies on the accused.

27. In the present case, considering the nature and quantity of the contraband, and in the absence of any material to demonstrate that the applicant was merely a transporter unaware of the nature of the goods, it cannot be said that the twin conditions of Section 37 are satisfied. Hence, the bar under Section 37 operates against the grant of bail.

28. In view of the aforesaid discussion, and having regard to the seriousness of the allegations, nature of the substance recovered, and the statutory bar under Section 37 of the NDPS Act, this Court is not inclined to exercise discretion in favour of the applicant.

29. Hence, the following order is passed:

(a) The Bail Application stands rejected.

(b) It is, however, clarified that the observations made herein are confined to the consideration of the bail application and shall not influence the trial Court while deciding the matter on merits.

(c) The applicant is at liberty to renew his request for bail if there is any substantial change in circumstances, or at an appropriate stage during the trial.

(AMIT BORKAR, J.)