

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 5342 OF 2024**

Rajubhai Valubhai Bharwad ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Darshit Jain a/w. Mr. Aiqan Memon for applicant.

Mr. Avinash A. Naik, APP for respondent-State.

Mr. S. R. Sakpal, API, Kongaon Police Station, District Thane City.

CORAM : MANISH PITALE, J.

DATE : 16th JANUARY, 2025

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant in the present case was arrested on 23.05.2023 in connection with FIR No.0115 of 2023 dated 24.03.2023, registered at Kongaon Police Station, District Thane City, for offences under Sections 273, 276 and 328 of the Indian Penal Code, 1860 and Sections 18(a), 18(a)(iv), 18(c), 27(d) and 27(b)(ii) of the Drugs and Cosmetics Act, 1940.

3. The allegation in the present case is that upon secret information being received about contraband being handled, accused Nos.1 to 4 were apprehended with 6,000 bottles of cough syrup containing contraband codeine, which amounted to commercial quantity.

4. During the course of investigation, it is alleged that the role of the applicant came to the fore, as it is alleged that he conspired with

the co-accused persons in transporting and delivering the contraband.

5. The learned counsel for the applicant submits that even if the entire material filed alongwith the chargesheet, is to be taken into consideration, other than the contents of the *panchanama* dated 24.03.2023, which refer to the role of the applicant, there is no other material to link the applicant with handling of the contraband in the present case. It is submitted that the applicant is in the business of helping provide transport services to interested individuals and entities. It is submitted that the applicant, during the course of aforesaid business, simply assisted the co-accused persons in getting in touch with each other for transport of goods, without any knowledge of the contents thereof. It is submitted that there is no material to link the applicant with the incident in question and therefore, this Court may consider releasing the applicant on bail.

6. The learned APP submitted that *panchanama* dated 24.03.2023 refers to the role of the applicant. On this basis, it is submitted that the involvement of the applicant appears to be evident.

7. This Court has perused the copy of chargesheet and the documents filed therewith. There is substance in the contention raised on behalf of the applicant that other than the contents of the *panchanama* dated 24.03.2023, which refer to the role of the applicant, there is no other material to link the applicant with handling of the contraband in the present case. There is no material to indicate any financial dealings between applicant and the co-accused persons, which could, in turn, be linked with the supply of

the contraband and in such a situation, it can be said that the applicant has indeed made out a strong *prima facie* case in his favour. It is specifically stated that the applicant does not have any criminal antecedents. Therefore, this Court is of the opinion that the applicant has succeeded in satisfying the stringent twin test contemplated under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, thereby indicating that the applicant can be released on bail, subject to appropriate conditions.

8. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.0115 of 2023 dated 24.03.2023, registered at Kongaon Police Station, District Thane City, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial Court about his contact number and residential address and update the same in case of any change.
- (iii) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.
- (iv) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

9. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

10. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli