

AGK

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

BAIL APPLICATION NO.2906 OF 2025

Ismail Abdullah Ansari	... Applicant
V/s.	
The State of Maharashtra	... Respondent

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.08.02
12:43:45 +0530

Mr. B.J. Shaikh with Mr. Santosh Madkarni for the applicant.

Mrs. Shilpa G. Talhar, APP for the respondent-State.

Mr. Pandurang R. Salunkhe, PSI, Ghatkopar Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 1, 2025

P.C.:

1. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.PC." for short), the applicant seeks regular bail in connection with Crime Register No.867 of 2023, registered with Ghatkopar Police Station, Mumbai. The applicant is charged for offences punishable under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short).

2. The case of the prosecution, in brief, is that on 10th October 2023, the complainant, who is a Police Constable, was on duty near Jagruti Metro Station, Mumbai. At that time, he noticed a person moving suspiciously with a white coloured nylon gunny

bag. Upon being stopped on the ground of suspicion, the said person attempted to flee from the spot. He was chased and apprehended by the police. On checking the bag in his possession, it was found that he was carrying 91 bottles of cough syrup of 100 ml each. Each bottle contained codeine phosphate, with 100 mg of the said substance in every 5 ml of syrup. It is the case of the prosecution that such substance falls under the category of a psychotropic substance under the NDPS Act and its possession requires a valid prescription from a registered medical practitioner. The applicant could not produce any valid prescription, license, or document authorizing him to carry such quantity. Accordingly, the present FIR came to be registered against him.

3. Learned Advocate appearing for the applicant submitted that the applicant is a young student pursuing medical education. It is urged that he is in custody for more than one year and nine months and further detention will cause irreparable prejudice to his education and future career. It is also contended that there has been non-compliance of the mandatory provision under Section 50 of the NDPS Act, which mandates that the accused be informed of his right to be searched in the presence of a Gazetted Officer or Magistrate. On these grounds, the learned Advocate submits that the applicant deserves to be released on bail.

4. On the other hand, the learned APP has opposed the bail application. She invited this Court's attention to a communication dated 10th October 2023, recorded in the applicant's own handwriting, in the presence of two independent panch witnesses, wherein the applicant has stated that he is aware of his legal right

under Section 50 of the NDPS Act and that he does not wish to be searched before a Gazetted Officer or Magistrate. It is submitted that this evidences full compliance with Section 50. She further pointed out that the applicant was found in possession of 91 bottles of cough syrup containing codeine phosphate, which as per the prosecution, qualifies as a "commercial quantity" under the NDPS Act. The forensic report confirms the presence of codeine phosphate in the seized substance. It is, therefore, submitted that in view of the bar under Section 37 of the NDPS Act and the seriousness of the offence, the applicant does not deserve to be enlarged on bail.

5. I have considered the submissions advanced by the learned Advocate for the applicant and the learned APP for the State. I have also perused the material placed on record, including the FIR, seizure panchanama, and the forensic report.

6. The offence alleged against the applicant is of serious nature. It is not in dispute that the applicant was apprehended while carrying 91 bottles of cough syrup, each containing codeine phosphate. As per the chemical analysis report, the seized substance contains codeine phosphate, which is a notified narcotic substance under the NDPS Act. The total quantity recovered falls within the definition of commercial quantity under the NDPS Act. Therefore, the rigours of Section 37 of the Act are attracted.

7. Section 37 of the NDPS Act lays down stringent conditions for granting bail in respect of offences involving commercial quantity. As per the said provision, bail can be granted only when

the Court is satisfied that there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. In the present case, based on the prima facie material on record, such satisfaction cannot be recorded.

8. The submission of the learned Advocate for the applicant that there was non-compliance of Section 50 of the NDPS Act does not appear to have merit at this stage. The record contains a handwritten communication dated 10 October 2023, purportedly written by the applicant in the presence of two independent panch witnesses, stating that he was aware of his right under Section 50 and that he voluntarily waived the said right. The question whether the said communication was obtained voluntarily or under duress is a matter of trial. For the purpose of bail, compliance with Section 50 appears to have been prima facie made.

9. Furthermore, the applicant was found in possession of a large quantity of narcotic-laced cough syrup without any prescription or licence. The nature of the contraband, its quantity, and the absence of any plausible explanation for possession raises serious concern regarding the applicant's involvement in illicit trafficking or distribution. These aspects cannot be lightly ignored, especially when the menace of drug abuse is spreading fast in society and poses a grave threat to public health.

10. The contention that the applicant is a student and has been in custody for a substantial period also cannot be a ground to

grant bail in view of the statutory restrictions under Section 37. In cases under the NDPS Act involving commercial quantity, individual hardship cannot by itself be a ground for bail unless the twin conditions under Section 37 are satisfied. In the present case, such satisfaction is not possible on the basis of the available material.

11. In view of the above discussion, and considering the seriousness of the offence, the commercial quantity involved, and the statutory bar under Section 37 of the NDPS Act, I am not inclined to exercise discretion in favour of the applicant.

12. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)