IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3730 OF 2025

Safiya Ashraf Shaikh ... Applicant
V/S.
Union of India and Anr. ... Respondents

Mr. Sumeet Garje a/w. Jamal Khan and Ajinkya Karad, for the Applicant.
Mr. S.K. Halwasia, Addl.P.P. a/w. Ms. S.S. Halwasia for Respondent No.1 – UoI.
Mr. H.J. Dedhia, APP for Respondent No.2–State.
Mr. Aman Khan, Investigating Officer, present.

SANJAY ASARAM MANDAWGAD
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CORAM: SHYAM C. CHANDAK, J.
DATED : 13th OCTOBER, 2026

P.C. :-

1. Heard learned Counsel for the parties. Perused the record.

2. Present application seeks release of the applicant on bail in Special (NDPS) Case No. 397 of 2024, pending before the learned Additional Sessions Judge, Kalyan, arising out of NCB/MZU/CR-10/2024, registered with NCB, Mumbai Zonal Unit, Mumbai, for the offences punishable under Sections 8(c), 21(c), 22(c), 27A and 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"), on the report filed by Mr. Mohammad Aman Khan, PSI, NCB, Mumbai.

3. The prosecution case is that, on the basis of specific information, the Officers of Respondent No.1 along with two panchas, intercepted a total of six accused persons, including the applicant, on 07.06.2024, at about 06:00 a.m. at Kalyan station. when they arrived there by train No.12102, travelling from

Bichalighat, West Bengal. The applicant is original Accused No. 1. It is alleged that all the six accused persons were carrying one bag each. When the said bags were checked in the presence of panchas, the bags were found to contain boxes of illicit Codeine Phosphate & Tripolidine Hydrochloride WINCEREX Cough Syrup. There were total 1250 bottles of 100 ml each. The said bottles were seized and a seizure panchanama was recorded. Accordingly, the aforesaid crime came to be registered and all the six accused persons were arrested. On completion of investigation, the Respondent NCB filed the complaint. The applicant's application for bail came to be rejected by the trial Court.

4. Mr. Garje, learned counsel for the applicant submitted that the applicant was allegedly found in possession of only 94 bottles of the contraband in the bag which she had carried. Although the offence under Section 29 of the NDPS Act is alleged, it cannot be maintained that the entire 1250 bottles were in the conscious possession of the applicant. The applicant is in jail for the last 28 months. The charge was framed on 19.11.2025. Till the date, no witness has been examined by the prosecution. Therefore, the detention of the applicant is turning punitive. The applicant has two criminal antecedents, i.e., one under Section 353 of IPC and one under POCSO, therein, she is on bail. Therefore, the applicant may be released on bail on the ground of prolonged incarceration.

5. Mr. Halwasia, learned Addl. P.P., on the other hand, submitted that the entire 1250 bottles of Codeine Phosphate cough syrup were purchased by the applicant making payment through her bank account. For that purpose, she had travelled to Kolkata by air and, to bring the contraband to Mumbai, the co-accused persons travelled to Kolkata at the instance of the applicant and

then they all travelled together carrying the contraband. Thus, there is a *prima facie* case against the applicant of having committed this offence, of procuring commercial quantity of the contraband cough syrup to sell the same. The applicant has not shown that she is not guilty of this offences. He submitted that, in the past also, the applicant was doing the same illegal activity. Therefore, the applicant is likely to repeat the offence. As such, the rigours of Section 37 of NDPS Act are applicable in this case. In this premise, this is not a fit case for bail.

6. I have considered these submissions. Considering the material on record, I found that there is a *prima facie* case against the applicant of having committed the present offence. However, it cannot be ignored that the applicant is in jail for the last 28 months. Although the charge is framed on 19.11.2025, till date, not a single witness has been examined by the prosecution. As such, the incarceration of the applicant is turning punitive. The applicant is a woman. She has no criminal antecedents under NDPS Act. She is not likely to abscond and tamper with prosecution evidence.

As alleged, Mr. Aman Khan, Investigating Officer, through the learned Addl.PP stated that the applicant had procured the contraband bottles form one Dilshad Akhtar, r/o. Kolkata. His details are stated in the Affidavit-in-Reply. When Mr. Aman Khan was asked by this Court about the investigation made to arrest Dilshad Akhtar, he replied that discreet inquiry was made about him. This indicates that no efforts are made to arrest the supplier of the contraband in the last 28 months, i.e., from registration of this offence.

7. In **Anandbhai Rajendrabhai Vaniya v. State of Gujarat**, Criminal Appeal No.859/2025 arising out of [SLP (Crl.) No.17042/2024], as alleged, the appellant was driving the car from which 995 bottles of RX Codeine Phosphate & Triprolidine Hydrochloride syrup were seized. The appellant had figured in eight cases, but, was discharged in five cases, acquitted in two cases and in the other remaining case, he was on bail. Taking into consideration the 17 months incarceration of the Applicant, the nature of allegations levelled against him and, the possibility of the trial not being concluded anytime soon, the Hon'ble Supreme Court released the appellant on bail.

In **MD Ezaz Afzal & Anr. v. State of W.B** SLA (Crl.) 12419/2024, the petitioners were arrested on 10.12.2023 as 1920 bottles of codeine phosphate syrup were seized from them. The trial was not commenced. No witness was examined, though 14 were cited by the prosecution. Taking note of the quantity of codeine phosphate syrup allegedly involved in the case and, the period of incarceration (11 months) already undergone by the Petitioners, the Hon'ble Supreme Court released them on bail.

8. Therefore, I am inclined to allow the application. Hence, following Order :-

(i) The applicant- Safiya Ashraf Shaikh be released on bail in in Special (NDPS) Case No. 397 of 2024, pending before the learned Additional Sessions Judge, Kalyan, arising out of NCB/MZU/CR-10/2024, registered with NCB, Mumbai Zonal Unit, Mumbai, for the aforesaid FIR, on her executing a P.R. Bond in

the sum of Rs.1,00,000/- with one or more sureties in the like amount.

(ii) The applicant shall mark her attendance at NCB, Mumbai Zonal Unit, Mumbai, on 1st day of a month, in each month, between 11:00 a.m. to 2:00 p.m., till conclusion of the trial.

(iii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(iv) The applicant shall not reside within the jurisdiction of Mumbai, Thane and Palghar Districts till the conclusion of the trial.

However, she is permitted to enter these Districts only to mark her attendance at NCB, MZU, Mumbai and to attend the Court/s where this and two other criminal cases are pending against her.

(v) On being released from jail, the applicant shall furnish her contact number and residential address to the Investigating Officer and shall keep him updated in case there is any change.

(vi) The applicant shall not indulge in identical activities for which she has been arraigned in this case.

(vii) The applicant shall not tamper with the prosecution evidence and shall not directly or indirectly influence the prosecution witnesses to prevent them from deposing against her.

(viii) It is clarified that any observation made in the present Order are for the purpose of deciding the present Bail Application. The trial Court shall decide the said case without getting influenced by any of the said observations.

9. Bail Application stands disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)