

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 501 OF 2025**

Nejfor Maful Sk @ Ali @ Raju

...Applicant

Versus

State of Maharashtra

...Respondent

Mr Yash Pulekar a/w Mr Anil Lalla, Ms Yashri Jain & Mr Rushil
Alag, *for the Applicant.*

Ms Anuja Sunil Gotad, *APP for the Respondent No. 1-State.*

CORAM DR. NEELA GOKHALE, J.

DATED: 10TH FEBRUARY 2026

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 77 of 2023 dated 5th September, 2023 registered with the ANC, Worli Unit, Police Station, for the offences punishable under Sections 9(C), 22 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The case of the prosecution in brief is that the Applicant was apprehended as he was found loitering in suspicious

circumstances, by the Police Officer. After following due process of the provisions of the NDPS Act, the Applicant was searched and 56 bottles of WELCYRES Cough Syrup containing Codeine Phosphate from his personal possession were found. By the side of the road there was a wooden handcart, the Applicant pointed to that handcart and on searching the said handcart, 500 bottles of WELCYRES Cough syrup containing Codeine Phosphate were recovered. Accordingly, the Applicant was arrested on 5th September 2023 and the FIR was registered.

3. The Applicant filed his application for seeking bail before the Special Judge (N.D.P. S.) at Greater Mumbai. However, by order dated 16th October 2024, the bail application was rejected, hence the Applicant is before this Court seeking to be enlarged on bail.

4. Mr. Yash Pulekar, learned counsel appearing for the Applicant, submitted that the prosecution has not followed the provision of the standing order issued by the Government

of India, pertaining to sampling procedure. According to him, 56 bottles of WELCYREX Cough Syrup containing Codeine Phosphate were recovered from the bag of the person and 500 bottles were recovered from the handcart. The Investigating Agency has only sent four bottles out of 556 bottles for testing and this scant ratio of sampling cannot be relied upon as the CA results of those bottles have tested to be positive. He submits that all this is presumptive, the other bottles of Cough Syrup may not contain Phosphate as that found in the trolley bag. He further submits that the Applicant is arrested on 5th September 2023 and till the charges are not framed. Hence, the trial will not conclude in the foreseeable future, and prays that the Applicant be released on bail.

5. Ms. Anuja Gotad, learned APP, supported by Ms. Megha Bajoria, learned APP, oppose the Bail Application. Ms. Gotad relies on the decision of the Supreme Court in the matter of *Jothi @ Nagajothi Vs. The State, Rep. by the Inspector of Police*.¹ According to Ms. Anuja Gotad, the Supreme Court has

1 2025 INSC 1417.

in fact clarified the scope, purpose and effect of Section 52-A. Relying on the reported decision in the case of ***Bharat Aambale Vs. State of Chhattisgarh***², the Supreme Court observed that mere non-compliance or delayed compliance with Section 52-A is not fatal unless the irregularity creates discrepancies affecting the integrity of the seized substance or rendering the prosecution case doubtful.

6. Ms. Gotad, further submits that the seized articles belong to the same batch as is evident from the batch number and labels of all bottles and hence it is a far-fetched theory to say that the bottles not sent for sampling may contain something different. Canvassing this aspect further, Ms. Gotad has also relied upon a letter issued by the manufacturer of the product of the Cough Syrup to show that the entire lot of bottles came from the same lot and hence bear the same batch number. In the circumstances, she submits that the Bail Application be rejected.

2 (2025) 8 SCC 452.

7. I have heard the counsels for the respective parties and perused the records with the assistance.

8. Admittedly, out of 556 bottles seized, 4 bottles were sent for sampling. Although, undoubtedly the Supreme Court in *Jothi @ Nagajothi* (supra) has observed that the delayed compliance or non-compliance is not fatal to the case, however, in the present case at hand, the irregularity in sampling has a propensity to create a discrepancy in quantity of contraband found casting a doubt on the contents of the seized substance.

9. In the circumstances, there is a reasonable ground to believe that the Applicant may not be guilty of the said offence. The Applicant has no antecedents and hence, in all probability he will not repeat the said offence. Furthermore, the Applicant is arrested on 5th September 2023 and till date the charges are not framed. It is thus, unlikely that the Trial will be concluded in the foreseeable future, I am inclined to enlarge the Applicant on bail. Hence, I pass the following order: -

ORDER

- i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;
- ii) The Applicant shall attend the Trial Court concerned on each and every date unless exempted by the orders of the Trial Court concerned;
- iii) The Applicant shall also attend the Police Station concerned on the first Monday of every month between 11:00 a.m. to 02:00 p.m.;
- iv) If the Applicant has not deposited his passport, if any, the Applicant shall deposit the same with the Police Station concerned;
- v) The Applicant shall not leave India, without the permission of the Trial Court;

vi) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vii) The Applicant shall inform his latest place of residence and contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Police Station concerned;

viii) The Applicant to co-operate with the conduct of the trial;

ix) Any infraction of the aforesaid conditions shall entail cancellation of bail.

10. Application is allowed in the above terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(DR. NEELA GOKHALE, J)