

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3656 OF 2025

Ramesh Viraswami Naydu @ Anna	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Kiran Gogavale, for the Applicant.
Mr. Mayur S. Sonavane, APP for the Respondent - State.
PI – Abhijeet Ahirrao, ANC Ghatkopar Unit, Mumbai, present.

CORAM: R. M. JOSHI, J.

DATED: 27th MARCH, 2026.

PC:-

1. The Applicant seeks his enlargement on bail in connection with CR No.55 of 2023 dated 14th June, 2023 registered with Anti Narcotic Cell, Mumbai, for offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances ('NDPS') Act, 1985.

2. It is the case of the prosecution that in a chance recovery, from present Applicant 284 bottles of Codeine Phosphate were recovered. Similar is the recovery from Accused No.1. Accused Nos.3 and 4 are arraigned as accused as their involvement established during the course of investigation.

3. Learned counsel for the Applicant submits that the Applicant is entitled for bail on parity as the co-accused persons except for Applicant i.e. Accused No.2 are enlarged on bail by this

Court. It is his submission that Accused No.1, who is said to be the prime accused and was also having found in possession of same contraband of commercial quantity is enlarged on bail by this Court by order dated 24th March 2025. It is his submission that the said order of bail came to be granted with an observation that there is herein this case Section 52A(3) of the NDPS Act is not complied with and that the said accused are in jail for a period of one year and seven months. It is his further submission that there is evidence to indicate that the Applicant is the employee of the license holder of the alleged articles seized from him. In such circumstances, according to him this is a fit case for grant of bail.

4. Learned APP opposes application by pointing out at the outset that the contention of the Applicant that he was the employee of a licensee is not supported by the evidence on record. In this regard, reference is made to the charge-sheet indicating the surrender of the license of Parmar Pharma & General Store on 6th March, 2021. It is submitted that in view of the surrender of the said license there is no merit in the contention that on behalf of the licensee the bottles in question were carried. As far as the parity is concerned, it is argued that against the Applicant there are 29 offences registered and one of them is under the NDPS Act. It is thus contended that the embargo of Section 37 would apply to the present Applicant.

5. At the outset, this Court would like to deal with the the submissions on behalf of the Applicant with regard to the Applicant being employee carrying bottles in question at the relevant time. *Prima facie* perusal of the charge-sheet indicates

that license of the establishment, for whom Applicant claimed to have been working is surrendered on 6th March, 2021. In view of the same, at this stage the said contention of the learned counsel for the Applicant does not deserve acceptance.

6. Perusal of the record indicates that there is compliance of mandatory provisions of NDPS Act. Insofar as the non-compliance of Section 52A (3) of the Act is concerned, it would be relevant to take note that all the observations made by the Hon'ble Supreme Court in the case of ***Narcotics Control Bureau v. Kashif*** which reads thus:

“39. (i)

(ii)

(iii)

(iv)

(v) *Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.”*

7. These observations clearly indicate that the alleged discrepancy in compliance of Section 52A is explainable during the trial. As such, it does not become a ground for grant of bail.

1(2024) 11 SCC 372

8. Insofar as long incarceration is concerned, it would be fruitful to make reference to the judgment of the Hon'ble Supreme Court in case of *State of Madhya Pradesh v. Kajad*², wherein referring to the provisions of Section 37 of the Act and embargo created therein for grant of bail, it is observed that long incarceration itself does not become a ground for grant of bail. The observation of Hon'ble Supreme Court are reproduced hereinbelow:

“A perusal of Section 37 of the Act leaves no doubt in the mind of the Court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

2 2001 (7) SCC 673

9. As far as parity is concerned, the Applicant is having chequered criminal history with as many as 29 offences, one of them is under the NDPS Act. Thus, this Court has no reason to believe that the Applicant has not committed the offence and is not likely to commit the offence if released on bail.

10. Consequent to the said discussion, there is no merit in the application. Hence, Bail Application stands dismissed.

(R. M. JOSHI, J.)