

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4872 OF 2025

Mohammed Umar Gaus Mohammed Siddiqui ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Aditya Sharma a/w Ms. Priya Maurya, for the Applicant.

Mr. Mayur S. Sonawane, APP, for the Respondent - State.

API – Ganesh H. Holkar, R. A. Kidwai Marg Police Station,
Mumbai, is present.

CORAM: R. M. JOSHI, J.

DATED: 5th May, 2026

PC:-

1. Applicant seeks bail in connection with C.R. No. 232 of 2025 registered with R. A. Kidwai Marg Police Station, Mumbai for the offence punishable under Sections 8(c), 21 and 22 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short, “NDPS Act”) and Section 4 read with Section 25 of the Arms Act, 1959 (for short, “Arms Act”).

2. In short, it is the case of the prosecution that information was received in respect of the contraband. Thereafter, at about 12:15 p.m. while doing patrolling duty, the police personnel found one person in suspicious condition in a textile factory

situated at Wadala, Mumbai. Since his movements were found suspicious, and that he was also found adding something on the table in the said factory, the police thought it necessary to carry out search. During the course of the search, thirty six bottles of cough syrup suspected of containing Codeine Phosphate were recovered. Apart from this, commercial quantity of the twenty one bottles were seized from the dicky of the motorcycle. The present Applicant came to be accosted at the spot. On conclusion of investigation, chargesheet is filed.

3. Learned Counsel for the Applicant submits that co-accused is enlarged on bail. It is his further submission that the Applicant was at wrong place at wrong time. According to him, there is no evidence in order to show the Applicant having knowledge about said contraband is kept in the factory or in the dicky of the motorcycle. It is his submission that from the statement of the owner of the said factory it can be seen that the knowledge of the said contraband could be attributed to the co-accused Mazhar who has been already enlarged on bail. On these amongst other submissions, he seeks bail.

4. Learned APP opposed the application by contending that not only the statement of the owner of the factory but also the statement of Mohd. Khan indicates that Applicant has knowledge of the contraband being kept not only in the factory but also in the scooty of the present Applicant. In this regard, it is his submission that as per the statement of Mohd. Khan, though the said scooty stands in his name, in fact it is used by the present Applicant.

5. *Prima facie* perusal of record indicates that this is a case wherein commercial quantity of contraband is found not only from the factory but also from the dickey of the scooty which was in the custody of the present Applicant. There is C. A. Report indicating that seized article is Codeine. Needless to say that in view of the fact that there is recovery of commercial quantity of contraband, embargo of Section 37 of the Act could apply to the instant case.

6. In so far as the statement of the owner of the factory is concerned, though it states about co-accused Mazhar having knowledge about the said Codeine Phosphate bottles being kept in the factory, his statement is irrelevant for the recovery of the

contraband from dickey of the scooty of the Applicant. The said custody of the Applicant of the scooty as well as the contraband kept in the dickey can be seen from the statement of Mohd. Khan itself. Thus, this is the case wherein there is *prima facie* evidence in order to show that there is recovery of the commercial quantity of contraband which was in the conscious possession of the Applicant. Having regard to these facts and more particularly, when the pre-requisites of section 37 for grant of bail are not falsified, Applicant is not entitled for bail.

7. Learned Counsel for the Applicant has placed reliance on the order of the Hon'ble Supreme Court in a case of ***Md. Ezaz Afzal & Anr. Vs. State of West Bengal in Special Leave to Appeal (Cri) No(s). 12419 of 2024 [Arising out of impugned final judgment and order dated 31.07.2024 in CRM (NDPS) No. 1167/2024 passed by the High Court at Calcutta]***. Perusal of the said order indicates that it was passed in the facts of the said case. Once Court comes to the conclusion that contraband is of commercial quantity, the embargo created by Section 37 would apply and hence in absence of compliance of twin conditions

therein, Applicant is not entitled for bail. Hence, application stands dismissed.

(R. M. JOSHI, J.)

VDMokal/-