

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, DHULE.

(Presided over by Mr.D.M.Aher)

Application Exh.8

In

Special Case No.124/2025.

(CNR No.MHDH010019402025)

(Akbar Jalelya V/s. The State of Maharashtra)

ORDER

The applicant/accused Akbar Jalelya @ Akbar Ali Kaiser Ali Shah has prayed for regular bail vide Section – 483 of B.N.S.S. in connection with C.R.No.18/2025 registered at Chalisgaon road police station, U/Sec.238 of B.N.S., Section - 8 and 22(C) of the Narcotics Drugs and Psychotropic Substances Act, 1985 and U/Sec.18(C) of the Drugs and Cosmetics Act. I have read the grounds mentioned in applications.

2. The Investigating Officer and learned A.P.P. opposed the application vide say Exh.5.

Accusations :

3. On 28.01.2025 at 02.00 p.m., the police team of Chalisgaon road police station received information from the secret source that applicant/accused Akbar is possessing contrabands. Hence, at about 08.30 p.m., the police team conducted raid at the house of applicant/accused at Shabbirnagar, Dhule. He was possessing plastic bags. The said plastic bags were found containing 480 bottles of Codeine Phosphate and Triprolidine Hydrochloride Cough Linctus,

Rextop – T weighting 100 ml. each. The police seized the said contrabands. The police arrested the applicant/accused. Thereafter, P.S.I. Mr.H.J.Patil lodged the report. The crime is registered.

4. The applicant/accused is in the judicial custody. The investigation is over and chargesheet is filed.

Submissions :

5. The learned advocate Mr.N.G.Dusane submits that applicant/accused is falsely implicated. He submits that even otherwise there is non compliance of the mandatory provisions of Section – 42 and 50 of N.D.PS.Act. He submits that the aspect of said non compliance can be considered at the stage of bail. He submits that as there is non compliance of mandatory provisions and hence the bar of Section – 37 of the N.D.PS.Act does not attract to the case. He submits that the existence of previous ground is no ground to refuse the bail. He submits that the application may be allowed. In support of his submissions, he relied on Lowrence D’Souza V/s. State of Maharashtra, 1992 Cri.L.J. 399 (BOM H.C.), Folarin Andoyin V/s. State of Maharashtra, 2022 ALL M.R. (Cri.) 1702 (BOM HC), Sholadoye Joy V/s. State of Maharashtra, 2022 ALL M.R. (Cri.) 1420 (BOM HC), State of Rajasthan V/s. Parmanand, 2014 ALL M.R. (Cri.) 1475 and Prabhakar Tewari V/s. State of U.P, 2020 ALL S.C.R. (Cri.) 638.

6. The learned A.P.P. Mr.N.B.Kalal submits that the

applicant/accused found in possession of the commercial quantity of contrabands. He submits that bar U/Sec.37 of the N.D.P.S.Act attracts to the case. He submits that there is compliance of mandatory provisions by the Investigating Officer. He submits that the applicant/accused is repeatedly indulging in similar offence. Hence, he prayed to reject the application.

Reasons :

7. The report, seizure panchanama and statements of witnesses prima facie show that the applicant/accused was intercepted with the 480 bottles of Codeine Phosphate. As per schedule in the N.D.P.S.Act, codeine is psychotropic substance. The quantity of 1 kg. and above is treated as commercial quantity of codeine. As per C.A.Report, the bottles were containing codeine. There was 10.772 mg. per 5 ml codeine found in the bottles. Thus, the quantity of codeine seized from applicant/accused falls in the category of commercial quantity.

8. Section – 37 of the N.D.P.S.Act provides that no person accused of offence involving commercial quantity of the contraband shall be released on bail unless the public prosecutor does not opposed the application and the court has reasonable grounds for believing that the accused is not guilty of the offence and he is not likely to commit the offence while on bail. In the present case, the public prosecutor has opposed application. There are no grounds to believe that the applicant/accused is not guilty of the offence and he is not

likely to commit the offence while on bail. Per-contra, the papers show that the applicant/accused has previous criminal history about the identical crimes. As per the say of the prosecution, Crime No.87/2022 and 77/2022 under the N.D.P.S.Act are registered against the applicant/accused. Thus, it cannot be said that the applicant/accused will not indulge in similar crime if released on bail. Thus, the bar of Section – 37 of the N.D.P.S.Act attracts to the application.

9. It is true that as laid down in the cited judgments, if there is non compliance of mandatory provisions, the bar U/Sec.37 may not attract. However, the mandatory provisions seem to be prima facie complied. Section – 42 mandates the reduced into writing of the information. It seems from the papers that the information was duly communicated to the S.P.,Dhule and permission was taken for raid. As regards compliance of Section – 50 of N.D.P.S.Act, the contrabands were found in the plastic bags. The contrabands were not seized from the person of the applicant/accused. It is well settled that Section – 50 of N.D.P.S.Act attract to the personal search. Section - 50 is not applicable if the recovery is made from the bag or vehicles. In the present case, the recovery is made from the bags and not from the person of the applicant/accused. Thus, the aspect of non compliance of Section 50 cannot be given much significance at this stage.

10. In the case of Lawrence Dsouza (supra) the compliance of provisions of section 41 to 58 of N.D.P.S. Act are discussed. In

folarin's case (supra) the bar of section 42 is discussed. In Sholajoy's and Parmanand's case, the compliance of section 50 is discussed. In the said cases, the bail was granted for non compliance of section 42 and 50 of N.D.PS.Act. In Prabhakar Tewari's case supra, it is held that the pendency of criminal cases is no ground to refuse the bail. However, in the present case, there seems to be compliance of section 42. The recovery is not made from personal search but from bags. Hence, prima facie section 50 of N.D.PS.Act does not attract. Hence, cited judgments are not useful to the applicant/accused.

11. It is clear that commercial quantity of psychotropic substance is seized from the applicant/accused. The applicant/accused seems to be repeatedly indulging in similar crimes one after the other. The bar U/Sec37 of the Act attracts to the case. Hence, the applicant/accused cannot be granted bail. The application is liable to be rejected. Hence, the order.

12. In view of the above, the application Exh.8 stands rejected.

Date : 14.08.2025.

(D.M.Aher)
Additional Sessions Judge
(Court No.5), Dhule.

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CERTIFICATE

I certify that the contents of this P.D.F. File are word to word as per Original Judgment/Order.

Name of the Stenographer : J.S.Jain.
Name of the Court : Court of District Judge-5,Dhule
Order directly typed on dias : 14.08.2025.
computer.
Order checked and signed by: 14.08.2025.
Presiding Officer
P.D.F. Uploading Date : 14.08.2025.

Sd/- xxx
Stenographer(Grade-I)