

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1229 OF 2025

Sunny Ghansham Jivnani Applicant
V/s.
Union of India and anr. ...Respondents

**WITH
BAIL APPLICATION NO. 2654 of 2025**

Mohanish Sasane Applicant
V/s.
Union of India and anr. ...Respondents

**WITH
BAIL APPLICATION NO. 2644 of 2025**

Manish Pawar Applicant
V/s.
Union of India and anr. ...Respondents

Mr. Taraq Sayed a/w. Ms. Ashwini Achari, Mr. Aryan Kotwal and
Mr. Devashish Dhanjode for the Applicant in all BAs.
Ms. Manisha Jagtap, Special PP a/w. Mr. Om Pote for the
Respondent No.1 – NCB.
Ms. Kranti Hiwrale, APP for the Respondent No.2 – State.
Mr. Devare, PSI, Lonavala Police Station, present.

CORAM: SHYAM C. CHANDAK, J.
DATED : 14th OCTOBER, 2026

P.C. :-

1. Heard learned Counsel for the parties. Perused the record.
2. Present applications seek release of the applicants on bail in NDPS Special Case No.17/2025 pending before the learned Additional Sessions Judge, Bhiwandi arising out of

F.No.NCB/MZU/CR-20/2024 registered with Narcotics Control Bureau, Mumbai Zonal Unit for the offence punishable under Sections 8(c), 20(b)(ii)(C), 28 and 29 of the Narcotic Drugs and Psychotropic Substances, 1985 (“NDPS”) on the complaint filed by Amol Trimbak More, Inspector, NCB, Mumbai.

3. The prosecution case is that on 09.08.2024, secret information was received by the NCB, Mumbai, that five persons, i.e., applicants – Sunny Ghansham Jivnani (A2), Manish Ravindra Pawar (A4), Mohanish Gautam Sasane (A5) and co accused Akash Bhagwan Patekar (A1) and Raj Govind Kutumbre (A3) are travelling in a white Toyota Innova car MH-05-CA-3907 (“the car”) and transporting a consignment of ganja with them. The car may cross Arjunali Toll Plaza, Padgha, Thane, towards Bhiwandi at about 1400 hrs on 09.08.2024. Said information was reduced into writing, placed before the superior officer and the raiding the team was constituted. The team then went to the Toll Plaza at about 1300 hrs., called two independent panchas and laid a trap there. At about 1410 hrs the said car approached at the Toll Plaza. It was stopped. All five accused were present in the car. On inquiry the accused gave their identity which matched with the secret information. On being questioned, they admitted that they were carrying ganja in their luggage and had no legal documents for it.

4. Further, search of the car was carried out before the panchas and the five accused. It yielded four black “Royal Classic” luggage bags, one “Uppercase” trolley bag, one “Skybag” backpack and one gunny bag, all containing brown-taped packets of green flowering and fruiting tops of cannabis. The seizure proceeded bag by bag.

5. The net quantity across the seven gunny bags (A to G) came to 75 kg. The emptied packets and all concealment material (bags,

backpack, trolley bag, gunny bag) were put in a gunny bag marked “P”. Cash of Rs. 1,18,680/- found in the glove box was sealed in envelope “N”. Four mobile phones (handed over by A1, A2, A3 and A5) were sealed in envelope “M”. Each bag and envelope was affixed with a slip signed by the five persons, the panchas, the seizing officer and, sealed with NCB brass seal No. 1. The vehicle was also seized. The panchanama concluded at about 1730 hrs.

6. Thereafter, notice u/S. 50 of NDPS Act was issued to each of the five persons, informing them of their right to be searched before a Magistrate or Gazetted Officer. All declined in writing and requested search by the NCB team. On personal search they handed over their belongings and showed empty pockets.

7. Statements of all five were recorded under Section 67 on 09.08.2024. They broadly stated that A4 and A5 went ahead to Jharsuguda, Odisha by train on 02.08.2024 to arrange the purchase. A1, A3 and A2 (as driver) followed on 06.08.2024 in the Innova car rented from one Jitu Ahuja at Rs. 3,000/- per day. All five met there and procured 75 kg of ganja from one “Ram”, at a village near Jharsuguda. They were returning to Ulhasnagar for local sale when intercepted. A4 and A5 admitted trafficking ganja from Odisha and selling it locally. Hence, all five were arrested.

8. Further statements of accused persons dated 13.08.2024 state that the group had made two earlier trips to Jharsuguda in July 2024, bringing back about 20 kg ganja each time. They bought the ganja at about Rs. 7,000/kg, sold it locally at Rs. 100-150, shared profits equally and, generally stayed at Hotel Payal, Jharsuguda. Investigation culminated in the complaint against all five under Section 8(c) r/w Sections 20(b)(ii)(C), 28 and 29 of the NDPS Act, 1985, in NCB Cr. No. 20/2024.

9. Mr. Sayed, the learned Advocate submitted that, the names and addresses etc. of the applicants and two co-accused stated in the panchanama is identical to the information stated in their Aadhaar Card. This cannot be a coincidence. He submitted that since the Aadhaar Card of A5 was not available, his address is not recorded in the Information Note. This circumstance indicate that, no secret information was received by the Officer of Respondent No.1, but, an after-thought story is put forward and the applicants and the co-accused have been implicated in this case.

Secondly, Mr. Sayed submitted that the seizure and sampling procedure is not in accordance with the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (“NDPS-SSSD Rules”). Therefore, the applicants have prima facie shown that they are not guilty of the aforesaid offences. Since the applicants have no criminal antecedents, they are not likely to commit similar offence. Thus, the applicants have met the rigours of Section 37 of NDPS Act, which entitle them for bail. To substantiate this submission reliance is placed on the decision in **Venktesh Shiva Permal v. State of Maharashtra**, reported in **2024 SCC OnLine Bom 251** and **Augustin Sunderraj Nadar v. Union Of India and Anr.** (BA/5332 of 2024 [Bom])

10. In reply, Ms. Hiwarale, the learned APP contended that, the secret information received by the Officers of Respondent No.1 was very accurate. There was no enmity between the accused party on the one hand and, the Officers of Respondent No.1 on the other. Said Officers had no reason to arrange 75 kgs of ganja and foist upon the applicant to falsely implicate them in this case. There is no irregularity in the procedure observed for the search,

seizure and sampling of the ganja. Whatever irregularity is pointed on behalf of the accused, whether it would vitiate the procedure of the search, seizure and sampling of the ganja is a question of trial. This material has corroborated statement of the applicants and their co-accused recorded u/S. 67 of the NDPS Act, therein, they have admitted this offence. Therefore, merely because the secret information matched with the details Aadhaar Cards of the accused persons, the prosecution case cannot be doubted. As such, there is a strong prima facie case against the applicants of having committed the aforesaid offence. The applicants have failed to explain that they are not guilty of the said offence. In the said statement u/S. 67 of the NDPS Act, the accused persons have disclosed that, earlier also, they had procured the ganja in the same manner. This indicates that the applicants are likely to repeat the offence. Therefore, bail be refused.

11. Looking at the controversy raised by these submissions, it is necessary to look into the provisions of Standing Instruction 1/88 (“S.I.-1/88”), Standing Order 1/89 (“S.O.-1/89”) and NDPS-SSSD Rules. Therein, Rule 3 provides for classification of seized material and Rule 10 provides for the procedure for drawing samples. Said Rules 3 and 10 read :

“3. Classification of seized material. – (1) The narcotic drugs, psychotropic substances and controlled substances seized under the Act shall be classified based on physical properties and results of the drug detection kit, if any, and shall be weighed separately.

(2) If the narcotic drugs, psychotropic substances and controlled substances are found in packages or containers, such packages and containers shall be weighed separately and serially numbered for the purpose of identification.

(3) All narcotic drugs, psychotropic substances and controlled substances found in loose form shall be packed in tamper proof bag or in container, which shall be serially numbered and weighed and the particular of drugs and the date of seizure shall also be mentioned on such bag or container:

Provided that bulk quantities of ganja, poppy straw may be packed in gunny bags and sealed in such way that it cannot be tempered with:

Provided further that seized concealing material such as trolley bags, backpack and other seized articles shall be sealed separately.

(4) The classification, weighing, packaging and numbering referred to in this sub-rule shall be done in the presence of search witnesses (Panchas) and the person from whose possession the drugs and substances was recovered and a mention to this effect shall invariably be made in the panchnama drawn on the spot of seizure.

(5) The detailed inventory of the packages, containers, conveyances and other seized articles shall be prepared and attached to the panchnama.

10. Drawing the samples. – (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn: Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than fourty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

12. Said NDPS-SSSD Rules are in line with the earlier Standing Instructions 1/88 (“S.I.”) and Standing Order 1/89 (“S.O.”) dealing with the search, seizure and sampling procedure in such cases. Said Rules have been incorporated with an object to have consistency in these procedures irrespective of the nature of the contraband and in what condition it was found.

13. In **Venktesh (Supra)**, in the seizure panchanama, it was recorded that Police Sub-Inspector had opened all four packets which were allegedly found in possession of the applicant. The contents therein appeared to be ganja. The packets were not identical. However, all the contents were mixed in a white nylon bag, weighed and, thereafter, samples were collected. The Court having regard to the object of S.I.-1/88 and S.O.-1/89, observed that when a person is sought to be fastened with liability for possessing a particular quantity of contraband, in bulk, on the basis of the sample collected, the Court ought to have the assurance that the sample so collected represented the entire bulk. The insistence on collecting samples from each of the packets and containers stems from this objective. Where the seizure panchanama did not indicate that the packets were identical and the contents were also identical and the officer effecting search had satisfied himself that the packets were identical in all respects, the mixing of the contents and thereafter collecting the samples from the said mixture, without anything more, erodes the sanctity of the samples so collected as representative samples of the bulk. Therefore, the Court held that there has not been substantial

compliance of the S.I.-1/88 and S.O.-1/89, resultantly, the question as to whether the liability can be fastened on the applicant for the possession of the contraband, prima facie, enters in the realm of uncertainty. Additionally, the Court noted that the contraband articles were seized on 31.01.2023. Inventory was conducted before the learned Metropolitan Magistrate on 10.02.2023 in accordance with the provisions contained in Section 52-A of the Act. The samples were delivered at Forensic Science Laboratory on 15.02.2023. The chemical analysis report indicates that each of the samples was found to be 'ganja'. In the opinion of the Court, the aforesaid facts may vitiate the seizure. The applicant had no criminal antecedents. Therefore, the Court held that the twin conditions under Section 37 of NDPS Act met with and directed to release the applicant on bail.

14. In **Augustin (Supra)**, applicant-Augustin Sunderraj Nadar (A1) was intercepted on 30.01.2023 at the airport while travelling from Ethiopian Airlines to Mumbai, on the basis of intelligence information. His trolley bag was seized and searched which led to recovery of two packets of contraband 'Cocaine'. In the first packet, 12 small box packets of soap were recovered and they were marked as "W-1 to W-12". Whereas, in the second packet, 4 similarly placed white coloured small box packets were recovered having the contraband 'Cocaine'. Thus, the A1 had smuggled the alleged Cocaine embedded inside the soaps. The seizure panchanama indicated that the prosecution undertook the exercise of ascertaining the veracity of the alleged contraband and after scrapping the wax from each of the soaps and testing the alleged contraband found inside each of the soap. The test results were in the affirmative. Thereafter, as stated in the seizure panchnama, the officers of the prosecution broke the said 12 soaps

into a powder, mixed them and thereafter sealed the same in accordance with law. Similar exercise was undertaken with respect to the other 4 soaps found in the second packet also.

Considering these facts juxtapose to Rules 3 and 10 of the NDPS-SSSD Rules, the learned Single Judge of this Court held that the investigating Officer is not empowered to mix the seized contraband at the outset as the Rules do not provide for the same. Rather, said Rule 3 categorically envisages a procedure for seizure of contraband from various packets/containers when seized as also drawing of samples from each of the seized packet in accordance with law. The same procedure is adopted under Rule 10 of the NDPS-SSSD Rules. If the investigating Officer does not follow the Rules it is a sufficient ground to arouse suspicion about the veracity of the prosecution case. Therefore, the accused was directed to be released on bail. When this decision was assailed, the Hon'ble Supreme Court did not incline to interfere with the same and hence, dismissed the SLP.

15. In the present case, as recorded in the panchanama, in the first of the four black "Royal Classic luggage bag, 14 packets were found. One packet was cut opened and a sample tested positive for ganja on the field drug detection kit. The remaining 13 packets were then opened and it found containing same substance ganja. The total contents in the 14 packets weighed 13.500 kg without packaging. They were transferred into a white gunny bag, mixed well and, the gunny bag was marked "A".

15.1 In other such three luggage bags, the numbers of packets found were 12, 11 and 11 respectively. The said packets were also found containing similar substance believed to be ganja which tested positive for ganja in field drug detection kit. When the

contents of the individual bag were weighed without plastic bag, they were found to be weighing 11 kg, 11.500 kg and 11 kg. Further, the contents of said three individual black luggage bags were transferred in three different white plastic gunny bas and marked “B”, “C” and “D”, respectively.

15.2 In backpack, trolley bag and gunny bag, they held 6, 10 and 12 packets, respectively. Said packets were also found containing similar substance believed to be ganja which tested positive for ganja in field drug detection kit. When the contents of the individual bag were weighed without plastic bag, they were found to be weighing 6 kg, 10 kg and 12 kg respectively. Further, the contents of said backpack, trolley bag and gunny bag were transferred in three different white plastic gunny bags and marked “E”, “F” and “G”.

16. Considering the aforesaid facts recorded in the seizure panchanama, it appears that all the packets containing ganja found in the seven bags, were identically packed, said packets were identical in size and also in weight. As provided in said Rule 3 sub-Rule (1), the narcotic substances seized under the Act shall be classified based on physical properties and results of the drug detection kit. In this case, the ganja like substance from only 1 out of the 14 packets found in the bag marked “A” was tested with the drug detection kit. Further, the contents in all the fourteen packets were mixed and then seized and packed. Although, the panchanama noted that substance found in the bags marked “B”, “C” and “D”, respectively was also tested positive for ganja, it is not discernible as to from which packet the substance was taken for the purpose of testing with the kit. However, immediately after the alleged testing, the contents in the said bags they were mixed and packed separately and marked “B”, “C” and “D” . In the similar

manner the substance found in the other bags were marked “E”, “F” and “G” and were dealt with. Thus, it is apparent that what is required by said Rule 3 sub-Rule (1) is not followed in this case for the purpose of classifying the contraband substance found in all the seven bags. In this case, as required by Rule 3 sub-Rule (2), the contraband substances found in the packages was required to be weighed separately and serially numbered for the purpose of identification.

16.1 As provided in Rule 10 (2), when the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages, and for each such lot of packages, one sample, in duplicate, shall be drawn: Provided that in the case of ganja, it may be bunched in lots of not more than fourty packages. However, this direction is also not followed in this case.

16.2 In the result, the mixing of the contents and thereafter collecting the samples from the said mixture, without anything more, erodes the sanctity of the samples so collected as representative samples of the bulk. Consequently, is difficult to accept that the substance contained in all the packets from the seven bags was ganja. Therefore, the seizure of the alleged ganja may be vitiated. This conclusion is fortified by the decisions in **Venktesh (Supra)** and **Augestin (Supra)**. In the backdrop, the facts that the details of the accused persons stated in the Information Note match with the details in the Aadhaar Cards of accused Nos.1 to 4, absence of the address of A5 and that, the accused persons were travelling from a distant place Jharsaugda (Odisha) carrying

the ganja, assume significance and weigh in favour of the applicants. The applicants-Sunny Jivnani and Mohanish Sasane have no criminal antecedents. Therefore, rigours of Section 37 of NDPS Act are not attracted against them.

The applicant – Manish Pawar has one criminal antecedent under the NDPS Act. Therein, he was arrested on transfer of his custody from this case. Four other cases against him are under the IPC in which he is on bail. Yet, considering the matter as a whole, his prayer for bail cannot be declined.

17. Thus, I am inclined to allow the applications. Hence, the following Order :-

(i) The applicants – Sunny Ghansham Jivnani, Mohanish Sasane and Manish Pawar be released on bail in the aforesaid NDPS Special Case No.17/2025 pending before the learned Additional Sessions Judge, Bhiwandi arising out of F.No.NCB/MZU/CR-20/2024 registered with Narcotics Control Bureau, Mumbai Zonal Unit, on their executing a P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount.

(ii) The applicants shall mark their attendance at Narcotics Control Bureau, Mumbai Zonal Unit on 1st and 16th day of a month between 11:00 a.m. to 02:00 p.m., till conclusion of the trial.

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

(iv) The applicants shall not indulge in identical activities for which they have been arraigned in this case.

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

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

(vii) 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.

18. Bail Applications stand disposed of in aforesaid terms.

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(SHYAM C. CHANDAK, J.)