

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1438 OF 2022**

Sanket Vishwanath Puri

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Abad Ponda, Senior Advocate with Mr. Vivan Karma for the Applicant.

Mr. S. R. Agarkar APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 28TH JUNE 2023

P. C. :

1. Heard learned Senior Advocate Mr. Ponda and learned APP Mr. Agarkar for the Respondent-State.

2. The Applicant is accused No.1. The Officer is present. This Court has granted bail to *Accused No.2-Hitesh Tatyara Kale Vs. The State of Maharashtra, Bail Application No.565 of 2022 dated 16th February 2023, (Coram : M. S. Karnik, J.)*, who was found possessing Narcotic LSD. He was arrested while accepting those papers. His personal search was taken and formalities were completed. The present Applicant, who is driver of scooty No.MH-43-BD-4512. Whereas accused No.2-Hitesh was pillion rider. In all 124 LSD paper

strips weighing about 1380 mg were found. The other articles were also found.

3. During investigation, it was disclosed that they are having financial dealings with accused No.3. Initially, the FIR is lodged and thereafter the charge-sheet is filed for the offence punishable under sections 8(c), 22(c), 29 of the NDPS Act.

4. My attention is invited by learned Senior Advocate Mr. Ponda to the report of the Chemical Analyser on page 249. There are four exhibits. It consists of LSD paper of different weight. According to Mr. Ponda the total quantity does not fall within purview of commercial quantity as notified for LSD papers. He invited my attention to para 8 clause No.(vi) on page 14 of the Application. The weight in milligrams and weight in grams is described therein for four exhibits. According to him this quantity does not fall within meaning of commercial quantity.

5. His another contention is that provisions of section 50 of the NDPS are not followed and he invited my attention to the observations in case of *State of Punjab Vs. Baldev Singh*¹ and more specifically to the observations in para 57 (3) and para 57(6).

1 (1999) 6 SCC 172

6. In addition to this submission, there is reliance on the order granting bail to the co-accused – Hitesh Kale. He submitted that if it is not commercial quantity, the bar under section 37 of the NDPS Act is not applicable.

7. Learned APP invited my attention to the contents of spot panchnama dated 22nd June 2021 and more specifically page 131 which deals with portion relating to compliance of section 50 of the NDPS Act. Additionally, he invited my attention to notice under Section 50 dated 22nd June 2021, on page 125. According to him even though Senior PI Mr. Kokani is a gazetted officer, the precaution was taken to inform the Applicant that if he desires, search would be taken in presence of nearest gazetted officer/Magistrate.

8. According to learned Senior Advocate Mr.Ponda the emphasis is not of nearest gazetted officer but on independent gazetted officer and he read over the observations of the Division Bench in para 8 of the order in ***Hitesh Kale***.

9. Admittedly, rigors of section 37 of the Act will not come into picture. So without going into contention whether requisite gazetted officer is present or not, I am inclined to grant bail.

10. The Applicant is behind bar since 23rd June 2021. Yet the trial has not started. One does not know when the trial will start in near future. Hence, the following order is passed :

O R D E R

- (a) The Applicant-Sanket Vishwanath Puri be released on bail in connection with C.R. No.124 of 2021, registered with CBD Belapur police station, Navi Mumbai for the offences punishable under sections 22(c), 29, 8(c) of NDPS Act on furnishing personal bond and surety bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall give attendance to the CBD Belapur police station on every alternate Saturday between 10 am and 1 pm for a period of one year.
- (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail, after notice to the Applicant.

11. I am not inclined to accept the request for depositing cash bail

for temporary period.

12. Application is disposed of accordingly.

13. These are my prima facie observations and the trial Court may not be influenced by that.

14. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]