

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4337 OF 2021**

Hemraj Ganeshram Patel ..Applicant
VS.
Intelligence Officer, NCB,
Mumbai Zonal Uni, Mumbai and anr. ..Respondents

**WITH
BAIL APPLICATION NO.4346 OF 2021**

Hemraj Ganeshram Patel ..Applicant
VS.
Narcotics Control Bureau,
Mumbai Zonal Unit, Mumbai and anr. ..Respondents

**WITH
BAIL APPLICATION NO.4339 OF 2021**

Hemraj Ganeshram Patel ..Applicant
VS.
Intelligence Officer, NCB,
Mumbai Zonal Unit, Mumbai and anr. ..Respondents

Mr. Taraq Sayed a/w Ms. Ashwini Achari and Mr. Advait Tamhankar for the Applicant.
Mr. Shreeram Shirsat a/w Ms. Nishi Singhvi a/w Anna Oommen for respondent no.1/NCB.
Ms. A. A. Takalkar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 16, 2023

P.C. :

1. Heard learned counsel for the applicant, learned counsel for the respondent no.1 and learned APP for the State.

2. These are applications for bail by the applicant-Hemraj Ganeshram Patel in connection with C.R. No.08 of 2020, C.R. No.07 of 2020 and C.R. No.06 of 2020 in respect of NDPS Special Cases Nos.887 of 2021, 994 of 2021 and 995 of 2021 respectively registered for the offence punishable under Section 8(c) read with Sections 21(c), 23, 25, 29 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "the NDPS Act", for short).

3. Mr. Shirsat, learned counsel appeared on behalf of respondent No.1 vehemently opposed these applications for bail.

4. There were three recoveries made from the co-accused – Shivam Hindia. A commercial quantity of psychotropic substances was recovered from the co-accused.

5. In C.R. No.06 of 2020 there is following recovery :-

"500 tablets of Diazepam, 1000 tables of Alprazolam and 1200 tablets of Finasteride."

6. In C.R. No.07 of 2020 the following psychotropic substance is recovered:-

"2.36 kgs of Hashish, 705 tables of Zolpidem, 110 tablets of Morphine, 50 tablets of Diazepam, 950 tablets of Alprazolam, 30 tablets of Amlodipine, 90 tablets of Modafinil and 59900 tablets of Zopiclone."

7. In C.R. No.8 of 2020 there is following recovery :-

"2000 tablets of Diazepam, 70 tablets of Tramadol, 388 tablets of Lozapam, 200 tablets of Zolpidem, 130 tablets of Diazem-Vulum and 510 tablets of Alprazolam."

8. A huge quantity of psychotropic substance (commercial quantity) was recovered. On the basis of the statement of the co-accused- Shivam Hindia, the applicant came to be arrested on 18/02/2021, 23/02/2021 and 07/03/2021 in connection with C.R. No.06 of 2020, C.R. No.07 of 2020 and C.R. No.08 of 2020, respectively. The entire quantity was recovered from the co-accused. The applicant was not found in possession of any psychotropic substance or that it is not alleged that there is any recovery made from the applicant. Except for the statement of the co-accused, there is no material to indicate the complicity of the applicant.

9. Mr. Shirsat, learned counsel for the NCB relying on the decision of the Hon'ble Supreme Court in the case of **Narcotics Control Bureau vs. Mohit Aggarwal**¹ contended that certain conditions as laid down in Section 37 of the NDPS Act have to be satisfied before the applicant can be enlarged on bail. It is submitted that it is on the basis of the statement of the co-accused, huge quantity of psychotropic substance is found. It is however submitted that considering the quantity of psychotropic substance, and there are as many as three recoveries made at the instance of the co-accused, the propensity of the applicant to commit such an offence in future cannot be ruled out. According to him, the applicant is not entitled to be enlarged on bail. It is submitted that even Section 29 of the NDPS Act is applied in the present case and if there is recovery from the co-accused, the applicant is also criminally liable under the provisions of NDPS Act.

10. Heard. The entire quantity is found from the possession of the co-accused. It is on the basis of the statement of the co-accused, the applicant has been

1 Criminal Appeal Nos.1001-1002 of 2022 (Supreme Court of India)

arrested. There is no recovery made from the applicant. The applicant is not found in possession of psychotropic substance. Apart from the statement of the co-accused, there is no other material to show his complicity with the said recovery. It is further submitted that the co-accused from whom the psychotropic substance has been recovered has been enlarged on default bail.

11. The present applicant is in custody since 18/02/2021 almost for a period of 1 year and 11 months. Except for the statement of the co-accused that the applicant is the supplier of the psychotropic substance, there is no material to indicate the applicant's involvement. In my opinion, the applicant can be released on bail, also considering the fact that he is in custody for almost 1 year and 11 months. The trial is not likely to conclude any time soon. I am satisfied that the conditions requisite as prescribed under Section 37 of the NDPS Act are fulfilled in the present case. The applicant is therefore enlarged on bail.

12. Hence, the following order :-

ORDER

- (a) Applications are allowed.
- (b) Applicant-Hemraj Ganeshram Patel shall be released on bail in connection with C.R. No.08 of 2020, C.R. No.07 of 2020 and C.R. No.06 of 2020 in NDPS Special Cases Nos.887 of 2021, 994 of 2021 and 995 of 2021 respectively, on his furnishing P.R. Bond of Rs.1,00,000/- in each case with one or more local sureties in the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with the evidence.
- (d) The applicant shall report to the Investigating Officer of the concerned police station once in fifteen (15) days of every alternate 1st and 3rd Saturday of the month

between 11.00 a.m. and 2.00 p.m. commencing from February, 2023.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

13. The Bail Applications are disposed of.

14. It is made clear that the observations are *prima facie* in nature only for the purpose of considering these applications for bail.

(M. S. KARNIK, J.)