

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

BAIL APPLICATION NO. 1905 OF 2024

Ravi Munnalal Jaiswal ... Applicant
Versus
The State of Maharashtra ... Respondent

Ms. Ashwini Achari a/w Taraq Sayed for the Applicant.
Mr. Sagar R. Agarkar, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 8th OCTOBER 2024**

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant was arrested on 6th January 2023 i.e. the date of registration of the FIR No. 0007 of 2023 registered at Hill Line Police Station, Dist. Thane, for offences under Sections 8(c), 20(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The applicant is one of the three named accused persons and the allegation is that the car in which the accused persons were travelling, was found to be containing *ganja* to the extent of about 89 kgs. The aforesaid amount of *ganja* is obviously commercial quantity and the applicant and the other accused persons were arrested. The investigation was completed and the charge-sheet was filed.

3. The learned counsel for the applicant submits that charges are yet to be framed, while the applicant has suffered incarceration

from 6th January 2023. It is submitted that in the present case, there is non-compliance of Section 52A of the NDPS Act in the sense that samples that were drawn at the time of seizure, have been directly sent for chemical analysis to the laboratory. The exercise under Section 52A of the NDPS Act was undertaken on 19th January 2023 and in the certificate issued by the Magistrate itself it was recorded that the samples drawn at the stage of seizure were already sent for chemical analysis. It was submitted that in such circumstances, the mandatory requirement has not been satisfied, which vitiates the case of the prosecution.

4. The learned APP submitted that the inventory *panchanama* was executed with alacrity on 19th January 2023 and certificate was issued on the same day, thereby showing that the exercise under Section 52A of the NDPS Act was undertaken at the earliest and within three weeks of the seizure and registration of the FIR. It could not be denied by the learned APP that the certificate issued by the Magistrate itself records that the samples drawn at the stage of seizure, were sent for chemical analysis to the laboratory.

5. This Court has perused the documents on record in the light of the rival submissions. In the case of *Union of India v/s. Mohanlal & Anr., (2016) 3 SCC 379*, the Supreme Court has laid down that the procedure contemplated under Section 52A of the NDPS Act pertaining to seizure and sampling has to be mandatorily followed. In paragraphs 14 to 19 thereof, the

Supreme Court has elaborated upon the position of law, which clearly indicates that non-compliance of the mandatory requirement can be a ground to claim that the prosecution case is vitiated.

6. In the present case, it cannot be said that the exercise under Section 52A of the NDPS Act was not carried out or that it suffered from delay, but the whole purpose of undertaking the mandatory exercise is to ensure the purity of the process of seizure and sampling and preparation of inventory *panchanama*, so that such samples, certified by the Magistrate, are forwarded to the laboratory for chemical analysis.

7. A perusal of the documents in the present case, shows that the seizure *panchanama* was executed and samples were prepared on the basis of which the FIR was registered on 6th January 2023 and the applicant, along with the other accused persons, was arrested. But, a perusal of the chemical analysis report dated 12th June 2023 shows that the samples for chemical analysis were received on 6th January 2023 itself i.e. the date of the registration of the FIR. These were obviously the samples that were drawn during the seizure of the contraband. The mandatory exercise contemplated under Section 52A of the NDPS Act was carried out on 19th January 2023, when inventory *panchanama* was executed and the Magistrate issued the certificate.

8. The certificate dated 19th January 2023 issued by the

Magistrate itself records as follows :

“ Out of seized article the police has taken 6 samples of 25 gms each. Exhibited A1 & A2, B1 & B2, C1 & C2 out of which Exhibit A1, B1 & C1 is sent for Chemical Analysis and other 6 Exhibit A & A2, B & B2, C & C2 is kept under central seized unit of Hill line Police Station, Thane.”

9. The above quoted portion of the certificate issued by the Magistrate clearly shows that the samples prepared at the time of seizure, were sent directly for chemical analysis to the laboratory without the intervening mandatory procedure of executing inventory *panchanama* and certification by the Magistrate. This clearly violates the mandate of the law laid down by the Supreme Court in the aforementioned judgment in the case of ***Union of India v/s. Mohanlal & Anr.*** (*supra*). Hence, the applicant has made out a strong *prima facie* case in his favour.

10. The applicant has satisfied the first limb of the stringent twin test contemplated under Section 37 of the NDPS Act. Since, the applicant does not have any criminal antecedents, the second limb is also satisfied and this Court is inclined to allow the application.

11. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 0007 of 2023 registered at Hill Line Police Station, Dist. Thane, on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount to

the satisfaction of the trial Court.

- (b) The applicant shall report to the Hill Line Police Station, Dist. Thane, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The applicant shall attend the trial Court on each and every date, unless specifically exempted by the trial Court.
- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

12. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application is disposed of.

MANISH PITALE, J.