

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

CRIMINAL BAIL APPLICATION NO. 2502 OF 2024

Anil Baban Mhaske

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Aniket Nikam with Mr. Sumit Patil, Mr. Pratik Jadhav, Dushyant Digambar, Ms. Shreya Anuwal i/b Mr. Amit Icham, Advocate for Applicant.

Mr. P. P. Deokar, APP for State-Respondent.

CORAM:- ANIL S. KILOR, J.

DATED:- 19th SEPTEMBER, 2024

PC:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 249 of 2024 registered with Yawat Police Station, Pune for the offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985).

3) The learned Counsel for the applicant argues that there is no compliance of Section 42(2) of the NDPS Act, 1985. He further pointed out that since the allegations are in respect of cultivation of

opium/poppy trees, there is no small or commercial quantities given under the NDPS Act, 1985. It is further argued that in this case Section 18(c) of the NDPS Act, 1985 would apply and under the said provision the maximum punishment is ten years.

4) On the other hand, the learned APP pointed out that there is a compliance of Section 42(2) of the NDPS Act, 1985. However, the letter dated 19th March, 2024, issued by the Police Sub Inspector on which the learned APP has relied upon to show that it is a compliance under Section 42(2), cannot be considered a compliance of Section 42(2) of the NDPS Act, 1985 as this letter was written for permission and no information in writing under Sub Section (1) or grounds for his belief, sent to his immediate official superior under Section (1) of Section 42 of the NDPS Act, 1985.

5) Furthermore, as under the NDPS Act, 1985, small quantity and commercial quantity with respect to cultivation of cocaine, have not been specified separately, and as therefore the offence is covered under Section 18 (c) of NDPS Act, 1985, I am of the opinion that as held by the Co-ordinate Bench of this Court in the case of Santosh Anna Dhavale Vs. State of Maharashtra, reported in 2020 SCC OnLine Bom 3464 , the applicant is entailed for grant of bail. Accordingly, the application is allowed. Hence, I pass the following order.

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No. 249 of 2024 registered with Yawat Police Station, Pune for the offence punishable under Section 18(c) of the Narcotic

Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985), on furnishing P.R.Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;

(iii) The Applicant shall attend said Police Station on 1st and 16th day of every month between 12.00 noon and 2.00 pm till conclusion of trial, except on the date of trial;

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

(v) Liberty is granted to the State for cancellation of bail in case Applicant breaches any of the conditions and/or if the applicant commits similar offence;

(vi) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason.

[ANIL S. KILOR, J.]