

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3012 OF 2022**

Sandeep Chotu Pawara	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 52 OF 2024**

Rehmal Lulya Pawara	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 3527 OF 2024**

Anand Shankar Devkar	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Abdul Raheem Bukhari for applicant in BA/3012/2022.
 Mr. Rajendra S. Bidkar for applicant in BA/52/2024 and BA/3527/2024.
 Mr. Mayur S. Sonavane, APP for respondent-State in BA/3012/2022 and BA/52/2024.
 Mr. Balraj B. Kulkarni, APP for respondent-State in BA/3527/2024.
 Mr. Jayaram Bhusare, PSI, Manpada Police Station, District Thane.

**CORAM : MANISH PITALE, J.
DATE : 05th DECEMBER, 2024**

P.C. :

1. Heard learned counsel for the applicants and the learned APPs for the respondent-State.

2. In these applications, the applicants are seeking bail as they were arrested in January 2022 in connection with FIR No.0035 of

2022 dated 21.01.2022, registered at Manpada Police Station, District Thane City for offences under Sections 8(c) and 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. In this case, the allegation is that the applicants were dealing with commercial quantity of *ganja*, as 20.300 kgs of *ganja* was recovered.

4. The learned counsel appearing for the applicants submitted that in the present case, the procedure adopted by the investigating authority is completely vitiated, as it violates the mandate under Section 52A of the NDPS Act, which pertains to seizure and sampling.

5. It is highlighted that in the present case, the samples from the alleged contraband were prepared at the spot itself and such samples were directly sent to the laboratory for testing, while the exercise of executing inventory *panchanama* and certification by the Magistrate, was undertaken subsequently. It is submitted that even the Chemical Analysis (CA) Report shows that the samples were received by the laboratory on 25.01.2022, thereby showing non-compliance with the mandatory requirement under Section 52A of the NDPS Act.

6. The learned APPs submitted that the aforesaid facts could not be denied. But, in the face of huge quantity of contraband having been recovered in the present case, it was submitted that no indulgence may be show to the applicants. It was further brought to the notice of this Court that insofar as the applicant Anand Shankar Devkar is concerned, he has 4 criminal antecedents and that this

factor ought to be taken into consideration.

7. This Court has considered the rival submissions. The persons accused of offence under the NDPS Act, when commercial quantity of contraband is involved, are required to satisfy higher threshold under Section 37 of the NDPS Act, to be enlarged on bail. Such applicants are required to demonstrate a strong case on merits and also that upon being enlarged on bail, they would not indulge in such conduct, which would lead to registration of further offences.

8. In the present case, the documents show that the *panchanama* was conducted on 21.01.2022, when the aforesaid contraband was seized. The samples were drawn at the spot and they were labelled A1, A2, B1 and B2. The documents on record further show that on 25.01.2022 itself, the said samples were sent for chemical analysis to the concerned laboratory. After chemical analysis, the report submitted by the laboratory dated 28.02.2023, specifically recorded that the samples were received on 25.01.2022. This sufficiently demonstrates that the samples prepared at the spot, when the *panchanama* was executed, were directly sent for analysis to the laboratory, without intervention of the mandatory procedure contemplated under Section 52A of the NDPS Act.

9. In fact, the record shows that while an application dated 21.01.2022 was submitted before the Magistrate for the said purpose, the inventory *panchanama* was actually executed on 09.02.2022 and the certificate was also issued by the Magistrate on the said date. But, the samples drawn during this process, are not shown to have been sent for chemical analysis. In any case, the samples having been already sent on 25.01.2022, which were

collected from the spot, clearly indicate that the requirement of law has not been satisfied in the present case.

10. In the case of *Union of India Vs. Mohanlal and another* [(2016) 3 SCC 379], the Supreme Court, in paragraph Nos.15 to 19, has discussed the mandatory nature of the said provision, thereby indicating that the applicants have made out a strong *prima facie* case in their favour. Thus, they have satisfied the first limb of the twin test contemplated under Section 37 of the NDPS Act. As regards the second limb, despite the fact that criminal antecedents are shown in respect of one of the applicants, this Court is of the opinion that since such criminal antecedents do not concern offences under the NDPS Act, it can be said to be a factor also in favour of the said applicant. It is an admitted position that even charge has not been framed in the present case and therefore, the trial would take its own time for being commenced and completed. The applicants have made out a case in their favour.

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

- (i) The applicants viz. Sandeep Chotu Pawara, Rehmal Lulya Pawara and Anand Shankar Devkar shall be released on bail in connection with FIR No.0035 of 2022 dated 22.01.2022, registered at Manpada Police Station, District Thane City, on furnishing PR Bonds of ₹ 50,000/- each and one or two sureties each in the like amount to the satisfaction of the trial Court.
- (ii) The applicants, upon being released on bail, shall report to Manpada Police Station, District Thane City on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial.

- (iii) Upon release, within one week, the applicants shall inform the Investigating Officer as well as the trial court about their contact numbers and residential addresses and update the same in case of any change.
- (iv) The applicants shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.
- (v) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

12. The applicants shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

13. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The applications are disposed of.

(MANISH PITALE, J)

Priya Kambli