

(Corrected as per speaking to minutes order dated 08.01.2025.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3744 OF 2024

Manish Bhupati Nath ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Irfan Shaikh for Applicant.
Mr. Balraj B. Kulkarni for Respondent.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 17, 2024

P.C. :

. Heard Mr. Shaikh, learned counsel appearing for the applicant and Mr.Kulkarni, learned APP for the respondent-State.

2. In the present case, the applicant was arrested on 20.02.2023 in connection with FIR No.119 of 2023 dated 19.02.2023 registered with Kalyan Taluka Police Station, District - Thane Rural, for offences under Sections 8(c), 20(b) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The allegation against the applicant is that, he along with co-accused person were found in possession of contraband i.e. *Ganja*. It was alleged that 7 kg *Ganja* was found in possession of the co-accused person and the applicant was in possession of 4 kg *Ganja*, which is intermediate quantity. Upon completion of investigation, charge-sheet was filed.

4. The learned counsel for the applicant submits that in the present case, samples drawn at the time of seizure were directly sent for chemical analysis to the laboratory and this completely vitiates the case

of the prosecution. It is submitted that the inventory *panchanama* executed before the Magistrate, purportedly under Section 52-A of the NDPS Act, also shows that even samples were not drawn before the Magistrate and that the said procedure was undertaken after the samples were already forwarded to the concerned laboratory. It is submitted that the chemical analysis report is not on record with the charge-sheet and in such circumstances, the applicant may be enlarged on bail as he has no criminal antecedents.

5. The learned APP, on the other hand, submits that this Court may not show any indulgence to the applicant as the record indeed shows that inventory certificate was issued by the Magistrate, and therefore, compliance with the mandatory requirement of law has been demonstrated. The contentions raised on behalf of the applicant can be said to be a matter for trial.

6. Having heard the rival submissions, this Court is inclined to allow the application. The record shows that *panchanama* was executed on 19.02.2023, when the applicant was allegedly found in possession of 4 kg Ganja. The samples were drawn and the documents on record show that the very samples drawn at the time of seizure were forwarded to the concerned laboratory on 20.02.2023. Thereafter, on 22.02.2024, inventory *panchanama* was executed before the Magistrate, who also issued a certificate in that regard. The contents of the said certificate are crucial because they show that even the Magistrate recorded the statement of the investigating officer that the samples drawn at the time of seizure were sealed and sent to the government laboratory for testing and the remaining seized *muddemal* was produced before the Magistrate. It is also relevant to note that the inventory certificate only records that the remaining *muddemal* was then packed in bundles and labelled. This indicates that even the exercise of drawing samples was not undertaken

before the Magistrate.

7. This indicates a strong *prima facie* case in favour of the applicant to claim that the prosecution case has been vitiated, due to failure to satisfy the mandatory requirement under Section 52-A of the NDPS Act.

8. The Supreme Court in the case of *Union of India Vs. Mohanlal and another*, **(2016) 3 SCC 379** has stressed upon the necessity to follow the said procedure to ensure the purity of the process of seizure and sampling. The said position of law has been *prima facie* violated in the present case, and therefore, the applicant has made out a case in his favour. The twin test contemplated under Section 37 of the NDPS Act stands satisfied as the applicant does not have any criminal antecedents.

9. 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.119 of 2023 dated 19.02.2023 on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (C) The applicant shall report to Kalyan Taluka Police Station on the first Monday of every month between 10 a.m. and 12 noon;
- (D) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the

details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

12. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

13. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

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