

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

CRIMINAL BAIL APPLICATION NO. 4648 OF 2024

Santosh Madhukar Gupta

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Mr. S. D. Hatle with Dr. D. S. Hatle, Advocate for Applicant.

Mrs. G. P. Mulekar, APP for State-Respondent.

CORAM:- ANIL S. KILOR, J.

DATED:- 18th NOVEMBER, 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. 261 of 2024 registered with Nandgaon Police Station, Nashik Rural for the offences punishable under Sections 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- 3) The argument made by the learned Counsel for the applicant for grant of bail is mainly on non compliance of Section 42 of the NDPS Act, 1985. It is stated that though the alleged seizure was conducted after sunset and before sunrise, search warrant or authorisation was not obtained.

4) He further pointed out that according to the panchanama, the information was received at 6.00 pm whereas, the search was conducted at 9.15 pm. Thus, there was sufficient time to make the compliance of Section 42 of the NDPS Act, 1985. In support of his submission, he placed reliance on two orders dated 15th September, 2023, passed in BA No. 2865 of 2022 and 15th July, 2024 in BA No. 4261 of 2021.

5) It is further argued that the quantity of Ganja is intermediate and therefore the twin conditions will not apply in this case. He has further pointed out that the applicant is suffering from a heart disease and a proper medical treatment is required. He accordingly prays for grant bail.

6) On the other hand, the learned APP pointed out from the case diary, the reason for not obtaining search warrant or authorisation as contemplated under Section 42 of the NDPS Act, 1985.

7) In the above-referred backdrop, having gone through the relevant material collected by the Investigating Officer during the investigation, there is no dispute that the information was received by the Empowered Officer at 6.00 pm. Whereas, the search was conducted at 9.15 pm. It is also evident that the search was conducted after the sunset and before the sunrise.

8) The co-ordinate Bench of this Court in the case of Ashok Manik Mhetre has observed thus:-

“....11. The communication dated 14th January, 2021 (page 81), indicates that the officer, who had received the intimation had taken down the information into writing and communicated the same to his immediate official superior. However, the reliance placed by the learned APP on the said communication to repel the challenge as regards the non-compliance of the second proviso to sub-section (1) read

with sub-section (2) of section 42 of the NDPS Act, 1985 does not appear to be well founded. Indisputably, the raid was conducted after sunset and before sunrise. It is not the case that a search warrant or authorization had been obtained. Nor does it appear that the officer had recorded reasons that the search warrant or authorization could not have been obtained without affording opportunity for the concealment of the evidence or facilitate the escape of the offenders. The information note dated 14th January, 2021 (page 81) is conspicuously silent about the recording of the grounds of such belief. Prima facie, there appears non-compliance of the mandate contained in Section 42 of the NDPS Act, 1985”.

9) In the present case, admittedly there is no such warrant or authorization has been obtained before the search was conducted. Thus, it can be said that there is no compliance of Section 42 of the NDPS Act, 1985.

10) As far as the reasons recorded in the case diary and relied upon by the learned APP, for not obtaining the search warrant or authorization are concerned, from the time of receipt of the information and the time of the actual search conducted by the Empowered Officer, there was a gap of more than three hours, which was sufficient for to make the compliance of Section 42 of the Act. This Court in a similar matter of Shivraj Gorakh Satpute has observed thus:-

“.....9. It is also pertinent to note that the said information was given at about 3.00 p.m. and the search and seizure was conducted after sunset. It is not the case of the prosecution that the empowered officer did not have sufficient time to obtain warrant or authorization without affording opportunity to the Applicant to escape or conceal the evidence. The concerned officer has not recorded reasons for such belief in terms of proviso to Section 42(1) of the NDPS Act. Hence, prima facie the search and seizure, which is in contravention of the mandatory provisions of Section 42 of the NDPS Act prima facie makes the recovery doubtful”.

11) In the circumstances, as there is no compliance of Section 42 of the NDPS Act, 1985 and further there are no antecedents against the applicant coupled with the fact that the quantity of contraband is intermediate, I am of the opinion that the applicant is entitled for grant bail.

12) Accordingly, I pass the following order.

ORDER

- (i) The Bail Application is allowed;
- (ii) It is directed that the Applicant shall be released on bail in Crime No. 261 of 2024 registered with Nandgaon Police Station, Nashik Rural for the offences punishable under Sections 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing PR. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;
- iii The applicant shall attend the said Police Station on 1st day of every month between 10.00 am to 11.00 am, till the conclusion of the 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 to apply cancellation of bail 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.

vii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]