

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 5191 OF 2024**

Kuldeep Gurnam Singh	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**ALONGWITH
BAIL APPLICATION NO. 5196 OF 2024**

Abhishek Devidas Wagh	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Gorakh Hanumant Liman a/w. Ms. Ashwini Gorakh Liman for both applicants.

Mr. Mayur S. Sonavane, APP for respondent-State.

Mr. Yogesh Kale, API, Kashimira Police Station, Mira-Bhayandar Vasai-Virar.

**CORAM : MANISH PITALE, J.
DATE : 16th DECEMBER, 2024**

P.C. :

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

2. The applicants in the present case, were arrested on 18.05.2023 in connection with FIR No.0364 of 2023 dated 18.05.2023 registered at Kashimira Police Station, Mira-Bhayandar Vasai-Virar, for offences under Sections 8(c), 20(b)(ii) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The applicants were arrested when 42 kgs of *ganja* was allegedly recovered from them in pursuance of information received by the investigating authority. *Panchanama* dated 18.05.2023 was

executed and further steps were taken. The applicants have remained incarcerated from the date of their arrest.

4. The learned counsel for the applicants submits that in the present case, the mandatory procedure contemplated under Section 52A of the NDPS Act has not been complied with and therefore, the applicants have a strong *prima facie* case in their favour. By referring to the documents on record, it is submitted that the samples drawn at the time of seizure, were directly sent to the concerned laboratory for chemical analysis, thereby vitiating the entire process. It is submitted that therefore, the applicants deserve to be enlarged on bail.

5. The learned APP, on the other hand, submits that the procedure contemplated under Section 52A of the NDPS Act, was indeed complied with and in that regard, attention of this Court was invited to certificate dated 21.08.2023 issued by the concerned Magistrate. It is submitted that therefore, the contentions raised on behalf of the applicants, would be a matter for trial and no indulgence may be shown, particularly because both the applicants have criminal antecedents.

6. This Court has considered the rival submissions. The documents on record clearly show that after the contraband was seized on 18.05.2023, as per the *panchanama*, the samples were drawn on the spot. The FIR also records the aforesaid fact and also notes the labels affixed to the samples as अ-1, अ-2, अ-3 and अ-4. The documents on record further show that by a forwarding letter dated 02.06.2023, the aforesaid samples were directly sent for chemical analysis to the concerned laboratory. In fact, the chemical analysis

report specifically records that the samples were received on 02.06.2023 itself and that as per the report dated 25.06.2024, the test results were found to be positive for the contraband *ganja*.

7. The aforesaid documents clearly show that the mandatory procedure contemplated under Section 52A of the NDPS Act, was not carried out before the samples were sent for chemical analysis to the laboratory. The document on which the learned APP relies, in fact, confirms the aforesaid fact, for the reason that the certificate issued by the Magistrate on 21.08.2023, shows that the inventory *panchanama*, if at all, was executed much after the samples were drawn on the spot and directly sent for chemical analysis.

8. The Supreme Court, in the case of *Union of India Vs. Mohanlal and another* [(2016) 3 SCC 379], particularly in paragraph Nos.15 to 19 thereof, has highlighted the mandatory nature of the procedure contemplated under Section 52A of the NDPS Act. It has been emphasized that the purity of the procedure of seizure and sampling, has to be maintained for the prosecution to prove the guilt of the accused persons.

9. Since the record in the present case shows that the procedure was not undertaken and the samples seized at the spot, were directly sent for chemical analysis, a strong *prima facie* case is made out in favour of the applicants in the present case. Although it appears that the applicants have some criminal antecedents, they have been granted bail in all such matters and therefore, this Court is of the opinion that the tests contemplated under Section 37 of the NDPS Act, are satisfied by the applicants and they deserve to be enlarged on bail.

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

- (i) The applicants viz. Kuldeep Gurnam Singh and Abhishek Devidas Wagh, shall be released on bail in connection with FIR No.0364 of 2023 dated 18.05.2023 registered at Kashimira Police Station, Mira-Bhayandar Vasai-Virar, 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 Kashimira Police Station, Mira-Bhayandar Vasai-Virar, on the first Monday of every 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.

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

12. 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.

13. The applications stand disposed of.

(MANISH PITALE, J)

Priya Kambli