



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

BAIL APPLICATION NO. 1567 OF 2025

KISHOR SHIVAJI PAWAR
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Aabad H. Ponda, Senior Advocate, i/b Mr. Abhaysinh K. Bhosle a/w
Mr. Nachiketa Goyal, Advocates for Applicant.

Mr. D. J. Patil, APP for Respondent / State.

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 26th August, 2025.

P.C.:

1 Heard.

2 This is an application for grant of regular bail in connection
with Crime No.0616 of 2025, registered with M.I.D.C. Waluj Police
Station, District Chhatrapati Sambhajnagar (City), for the offences
punishable under Sections 21(c), 22(c), 8(c), 25 and 29 of N.D.P.S.
Act, 1985.

3 The informant averred in the report that a secret
information regarding two vehicles carrying suspicious material was
received. Accordingly, they planned to catch the said vehicles. The

said two vehicles bearing registration No.MH04BU5160 and No.MH04EY9977 of Baban Plastics were intercepted. After some time, the vehicles were taken to MIDC Waluj Police Station where several plastic bags containing white powder-like substance were found. The contents of each vehicle were collected into a one bag each and weighed by using a government scale. The white powder weighing 1.111 kg was found from vehicle No.MH04BU5160 and white powder of 401 grams was found from vehicle No.MH04EY9977. A 20-gram sample was drawn and seized from each plastic bag found in the said two vehicles. The seized items from both vehicles were sealed and packed in the presence of *Panchas* and FSL experts. The said seized samples were brought to the MIDC Police Station.

4 The informant further averred that on the same day at about 10:45 am, one more search was conducted in the godown of Baban Khan, the proprietor of Baban Plastics. A raid was effected and various plastic bags containing more bags were found. Some of these inner bags were used for storing medical waste. A powder-like chemical substance was also found and collected from different bags and weighed. The total weight was found to be 961 grams. Five samples took from the powder-like substance for forensic analysis and those samples were packed and sealed in presence of *Panchas* and sent to the FSL, Chhatrapati Sambhajinagar. However, the laboratory

refused to accept the samples, stating that they could only be processed once an FIR had been lodged.

5 The informant further averred that a drug detection kit developed by Hindustan, Antibiotics Limited was brought from Chhatrapati Sambhajnagar Rural. PI Bagwade reopened the seals of the seized bulk materials in front of the *Panchas* and took out the white powder-like substance collected from the bags out of two vehicles and the godown for testing. The material was examined with the help of said drug detection kit. The powder in all three boxes changed colour from white to blue. The material was then sealed in *Khaki* packet and packed in the presence of *Panchas* and PI Bagwade. The police in their preliminary examination concluded that the powder-like chemical found in the three boxes is an MD-like substance. Therefore, the report was lodged.

6 The learned Senior Counsel for the applicant submitted that the applicant is falsely implicated in the crime. He is serving in the said company as an employee. He is not responsible for the said production. The company is having narcotic licence. The police have falsely connected the waste material with MD medicines. The test conducted are rudimentary test and the total go by is given to the procedure stated in the N.D.P.S. Act. Sample was not seized and it's

list inventory was not drawn up in the presence of a Judicial Magistrate. It is submitted that there is no such MD like psychotropic substance as asserted by the informant in the report. The applicant has no criminal antecedents. Practical investigation is over. The applicant has roots in the society and he will not flee away from the trial. Purported seizure is not suspected narcotic substance and the procedure as per the Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, is not followed. As per Section 105 of the BNSS, search and seizure are not recorded through electronic audio-video means. In the case-diary, grounds of belief of the said crime is not quoted by the investigating officer. The procedure under Section 52A of the N.D.P.S. Act read with Rules 8 and 9, upon seizure of a narcotic or psychotropic substance, required to be verified certifying its correctness and thereafter, inventory is to be drawn upon filing application before the Judicial Magistrate. The mandate of Rules 3(4), 5, 10, 12 and 13 is not followed. He submitted that the custodial interrogation of the applicant is not necessary. He lastly prayed to allow the application.

7 The learned Senior counsel for the applicant relied upon the following authorities:-

- i) In ***Raju Bhavlal Pawar and others Vs. The State of Maharashtra***, (Bail Application No.568 of 2021)

decided by the learned Single Judge of this Court on 26th October, 2021, it is held that,

7. So far as recording of information as required under Section 42(1) of the NDPS Act is concerned, admittedly the said information was not recorded. It was tried to be argued that the entry was taken in station diary and the same is sought to be treated as the information recorded under Section 42(1) of the NDPS Act. Learned counsel Shri Bhosale placed reliance on the case of Rajaram Kadu V/s. The State of Maharashtra (Bail Application No. 2108/2016) decided by this Court. In the case of Rajaram Kadu cited (supra), this very question had fallen for consideration before this Court. it has been held thus:

9 ... As far as non compliance with Section 42 of the Act is concerned, it can be seen that the information was received by Police Naik Bhagwat Saudane. The FIR does not indicate that he had reduced the information into writing or provided any copy of the information to his superior officer. The statement of API Divekar also does not indicate that he had reduced the information into writing or forwarded the same to his superior officer. However, the prosecution is relying upon the entries made by Senior PI. Sable of Ulhasnagar in the station diary to show the compliance of Section 42. That cannot be considered to be the compliance of Section 42 of NDPS Act. The point which is canvassed by learned counsel for Applicant is that the person who had received the information had not forwarded it to the superior officer and there is nothing on record to indicate that any such information was forwarded in writing It is, therefore, rightly contended that there is non compliance of Section 42(2) of NDPS Act."

- ii) In ***Bothilal Vs. Intelligence Officer Narcotics Control Bureau, 2023 SCC OnLine SC 498***, the Honourable Supreme Court held that,

11. Paragraphs 158.1 and 158.2 of the majority view in Tofan Singh's case, read thus

"158. We answer the reference by stating ;

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS ACT

- iii) In ***Simarnjit Singh Vs. State of Punjab, 2023 SCC OnLine SC 906***, the Honourable Supreme Court held that, 9. In paragraphs 15 to 17 of the decision of this court in mohanlal's case it was held thus;

15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

- iv) In ***Yusuf @ Asif Vs. State, 2023 SCC OnLine SC 1328***, the Honourable Supreme Court held that,

12.A simple reading of the aforesaid provisions, as also stated earlier, reveals that when any contraband/narcotic substance is seized and forwarded to the police or to the

officer so mentioned under Section 53, the officer so referred to in sub-section (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

13.. Notwithstanding the defence set up from the side of the respondent in the instant case, no evidence has been brought on record to the effect that the procedure prescribed under sub-sections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. The mere fact that the samples were drawn in the presence of gazetted officer is not sufficient compliance of the mandate of sub-section (2) of section 52-A of NDPS Act.

- v) In **Chandrabhan Janardhan Yadav Vs. State of Maharashtra, 2025 SCC OnLine Bom 462**, this Court held that,

15.The provisions of Section 52-A are crucial for understanding the reason for issuing the above certificate in Form 5. Section 52-A(1) contemplates power of Central Government to notify procedure for disposal of the contraband after seizure. Section 52-A(2) contemplates preparation of inventory panchnama as stated therein and

making an application to the Magistrate for the purposes of Section 52-A(2)(a), (b) and (c). Section 52-A(3) contemplates allowing the application by Magistrate by issuing the certificate in Form 5 as per Rules 8 and 18 Form 5 therefore specifically lists the application to be made and certificate to be given thereon by the Magistrate together.

- vi) In **Anuraj Vs. State of Kerala and another**, (Bail Appln. No.5549 of 2023) and connected matters, decided by the Kerala High Court by common order dated 21st May, 2024, it is held that,

17. The Narcotic Drugs and Psychotropic Substances Act came into force with effect from 14.11.1985. Subsequently, Section 52 A was inserted by Act 2 of 1989. However, there is no specific provision in the Act laying down the procedure to be followed in the drawal, storage, testing and disposal of samples of the contraband drugs/substances seized under the Act. Instead, Standing Orders/Instructions were framed by the competent authorities, from time to time, outlining the procedure to be followed in the drawal, storage, testing and disposal of the contraband drugs/substances. But, divergent views were expressed by the courts in interpreting the Standing Orders/Instructions. Ultimately, on 23.12.2022, the Central Government, in exercise of the powers conferred under Section 76 read with Section 52(A) of the NDPS Act, promulgated the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, laying down the procedure for the seizure, storage, sampling and disposal of the contraband drugs/substances seized under the Act.

8 The learned APP for the State strongly opposed the application and submitted that the applicant is involved in the serious crime. It is an anti-social crime seriously affecting the new generation. The mandatory procedure is properly followed by the investigating officer and there is ample material against the applicant. He submitted that for granting bail, it is necessary to establish *prima-facie* that the said crime is not committed by the applicant. He lastly prayed to reject the application.

9 Perused the application, the report and the papers of investigation.

10 This Court by an order dated 21st August, 2025, called the report from FSL through the concerned police station. In the report of FSL, the MD substance is not found and thus report is negative. On perusal of the papers of investigation, it appears that the procedure prescribed under Section 52A of the N.D.P.S. Act and Rules 3(4), 5, 10, 12 and 13 is not followed. The collection of substance from each bag and mixing it for testing is neither legal nor correct method adopted by the investigating officer.

11 Considering all the above reasons and fact with law laid

down in the precedential law (supra) submitted on behalf of the applicant and that the practical investigation is over, the applicant has no criminal antecedents, he has roots in the society, he will not flee away from the trial and the custodial interrogation of the applicant is not necessary as well as cardinal principle of bail jurisprudence that bail is rule and jail is exception, the bail application deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.0616 of 2025, registered with M.I.D.C. Waluj Police Station, District Chhatrapati Sambhajinagar (City), for the offences punishable under Sections 21(c), 22(c), 8(c), 25 and 29 of N.D.P.S. Act, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses, in any manner.
 - b) The applicant shall not tamper with the prosecution evidence, in any manner.

[SANJAY A. DESHMUKH, J.]