



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2032 OF 2024

Jiteshkumar s/o Premjibhai Hinhoriya
@ Jitesh Patel @ Jitesh Bhai,
Age : 44 years, Occupation : Business,
R/o: 19, Florenza Villas,
Kanchanwadi, Aurangabad. ... Applicant

Versus

Union of India
(Through Intelligence Officer)
Directorate of Revenue Intelligence
Pune Regional Unit,
4, Riverside Villas, Lane No. 1,
Boat Club Road, Pune-411 001. ... Respondent

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Mr. Ayyaz R. Khan i/by Mr. Abhaysinh K. Bhosle a/w Mr. Shardul
Shinde and Mr. Avinash Patil, Advocates for the Applicant.
Mrs. Vaishali S. Chaudhari, APP for State.
Mr. P. P. Dawalkar, Special Standing Counsel for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 29.04.2025

Pronounced on : 05.05.2025

ORDER :

1. Applicant urges for regular bail on account of his arrest in crime bearing F.No.DRI/MZU/PURU/ENQ-46 of 2023 registered at the instance of present respondent, i.e. Directorate of Revenue Intelligence [DRI], for offence punishable under Sections 22, 25, 27-A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short, "NDPS Act"].

SUBMISSIONS

On behalf of the Applicant :

2. Pointing to the date of arrest of applicant as 21.10.2023, it is submitted that applicant is behind bars since almost one and half year. That, FIR is against three persons and two are already enlarged on bail. There are allegations of possessing 2.960 kgs. Mephedrone [for short, "MD"] drug in a residential premises. Learned counsel invited attention of this Court to complaint, seizure panchanama dated 21.10.2023 and more specifically invited attention of the Court to Item No. 16 which refers to seizure in plastic bag. He pointed out that only such item is shown to be positive, but CA report is apparently negative. Moreover, according to him, there are serious lapses while conducting seizure, drawing of sample, its wrapping and its sealing.

3. He would emphasize that, the manner of packaging at the instance of respondent authorities raises serious doubt about credibility of the alleged seizure. He further pointed out that, said seizure was allegedly kept in a godown of GST. However, according to him, when seizure was produced before learned JMFC, the same did not match the description in the seizure panchanama. Therefore,

it is his submission that, there is high probability of tampering. Moreover, according to him, item no. 16 of which there is shown to be much concern by prosecution, there being no entry in the godown register, it is doubtful whether it was secured and safely deposited and the same was itself produced before learned JMFC. At this juncture, he points that, he has reasons to state so because there is no entry to that effect in the godown register, thereby raising reasonable doubt about very seizure. He pointed out that even signatures of pachas are not obtained on the seizure panchanama, further raising serious doubts about very seizure, and on this count he takes this Court through the panchanama. According to learned counsel, there are also corresponding doubts about the manner and procedure of packaging.

4. Learned counsel was very emphatic and vociferous in submitting that, there are doubts about same seizure to have been placed before learned JMFC while drawing inventory, as according to him, there is delay in producing it before said court since the date of its seizure. It is his submission that, learned JMFC, who is certifying authority, has not endorsed about correctness of the inventory and there is no seal of learned Magistrate who certified the correctness. It is his submission that, inventory ought to have been certified by

Magistrate by visiting the godown itself. But no such procedure has been adopted and all above lapses and lacunas have breached the NDPS Rules.

5. It is his next submission that, Section 52-A of the Act is germane and there are catena of judgments of Hon'ble Apex Court to comply the mandate of Section 52-A(2)(c).

6. That apart, he would point out that, prosecution is fundamentally relying on statements recorded under Section 67 of the NDPS Act, however, he vehemently submitted that, time and again Hon'ble Apex Court has reiterated that such statements are inadmissible and even at the stage of bail, court dealing with bail application would not be precluded from considering the statements under Section 67. That, here, heavy reliance is placed by prosecution on such statements to implicate applicant.

7. Lastly, he submitted that whatever seizure was to be done is already effected. Applicant is behind bars since October 2023. That, as per his information, till date charge has not been framed and as uncertainty prevails over future course of trial, relying on several pronouncements to that extent, as well as various previous bail orders of this Court, he urges grant of regular bail.

On behalf of the Respondent :

8. Learned counsel for respondent would emphasize that, on secret information, raid was planned and then conducted at the residential premises of applicant and contraband whose weightment turned out to be 2.960 kg MD, which is said to be commercial quantity, was seized in very presence of applicant. Learned counsel pointed out that, as contemplated under the NDPS Act, Rules and Standing Instructions, pre search procedure was scrupulously followed giving applicant, his wife sufficient knowledge about purpose of visit of raiding party. That, after obtaining their consent, raiding party had offered themselves for their personal search and after exercising their discretion to that extent, in their presence, house search was carried out, that too, in presence of independent panchas. Contraband was found and seized. Detail panchanama is drawn of the exact room and geographical directions are noted. That, in presence of independent panchas as well as applicant and his wife, seizure has been effected by securing explanations. That, utmost care was taken for earmarking the samples. Prescribed and prevalent procedure for wrapping was adopted. That, thereafter *muddemal* was duly deposited in a secure godown. Learned counsel pointed out that all precautions were taken that seizure remains untampered and intact till its production before court. Seizure was brought to the court in

full-proof condition. That, learned JMFC has himself verified the *muddemal*, its condition, manner of sampling, sealing and after reopening, item-wise cross checking has been done by the learned Magistrate. That, said Magistrate, on his due satisfaction, prepared report to that extent and issued certificate of correctness, which cannot be questioned by anyone or by any means, it being judicial process carried out in the court. Learned counsel also pointed out about chemical analysis to be positive and lastly he submitted that, provisions and procedure prescribed under NDPS Act are strictly adhered to, more particularly, Section 52-A, and ended up his submissions by pointing out that, there is strong presumption available in the statute and being serious offence, he prays to reject the application. (Written points are tendered across the bar and are marked as Exhibit "X" for identification).

View taken by this Court :

9. After considering the submissions of each of the respective sides and on going through the FIR/complaint/chargesheet, it is emerging that, on some secret information, DRI authorities raided applicant's residential premises and claims to have seized MD which, according to investigating machinery, is a narcotic and psychotropic substance.

10. After hearing learned counsel for applicant at length, there does not seem to be any challenge or dispute about present applicant to be consultant of M/s. Apex Medichem. However, he claims that he had already put up his papers and having resigned, he has no concern. The principal and fundamental grounds on which instant bail application is pressed into service, could be summarized as under :

Firstly, there is no seizure of contraband as described under Sections 8 and 22 of the NDPS Act.

Secondly, DRI authorities failed to adopt and follow proper procedure while making seizures, collecting samples and sending the same to FSL. His specific case is that, in stead of wrapping seizure in cloth, plastic wrappers were used, which according to learned counsel, is a serious lapse and deviation from established procedure.

Thirdly, there is a mismatch between alleged quantity of seizure of contraband and that one, which was sent to FSL.

Fourthly, storage was in violation to the procedure provided under NDPS Rules.

Fifthly, there was no distinct marking / identification mark.

Sixthly, learned Magistrate, before whom seizure was produced, did not specifically note that he himself certified the correctness of inventory. That, inventory ought to have been prepared by visiting the place of storage i.e. godown, which he failed to do so.

Lastly, there is breach and non compliance of Section 52-A of the NDPS Act and on such count, he seeks reliance on various rulings which he placed on record and the highlighted the ratio and relevant observations of the same by reproducing the same in the very bail application itself.

11. It is seen here, more precisely from the grounds enumerated in aforesaid para, that bail is sought primarily on the ground that applicant is behind bars since October 2023; there is utter disregard to procedure contemplated under the NDPS Act, more particularly, Section 52A of the NDPS Act; and thirdly, so-called confessional statements recorded by the agency under Section 67 are to be kept out of purview as the same has no evidentiary value and there to be series of legal pronouncements on this count.

12. This Court has gone through the entire charge sheet. It is noticed that, raid was conducted at the residential place of present applicant regarding which, there is no issue. When he was proceeding for his routine, in his Scoda car that day, he was intercepted by complainant authority and then taken to his residential premises and after introducing and appraising him and his wife, an opportunity to conduct their own personal search was offered by the team and on their denial, applicant's premises was searched wherein contraband was found. Description of the contraband, its exact location are reflected and noted in the detailed panchanama.

13. Regarding such events, in the arguments before this Court at least, there is no serious challenge. Exception has been taken to the manner of seizure, manner of sampling, its handling and its dispatching to the FSL. Attempt is made to point out that there is mismatch between quantity allegedly seized and quantity allegedly produced before learned JMFC, and the procedure of not wrapping seizure in cloth is also tried to be questioned and also attempt is made to find fault in the certification issued by learned JMFC.

14. This Court has noticed that the focal point of argument which is put forth is that, there is utter disregard to seizure, manner of collection of sample, its wrapping, manner of storage, probabalizing the aspect of tampering. Even heavy reliance is placed on Section 52-A of the NDPS Act. Several rulings and judgments on this point are referred to.

15. In the considered opinion of this Court, on going through the entire papers including charge sheet, there does not seem to be any force in the above submission regarding any breach, non-compliance, violation of procedure, Rules, Regulations and Standing Orders. On the contrary, it is noticed that, all necessary precautions and due care is taken by the complainant and raiding party i.e. both, pre and post seizure. Mere manner of wrapping is no good ground to doubt the credibility of the inventory. In fact, seizure has allegedly taken place right under the nose and in very presence of applicant. More so, immediately after the seizure was made, the same was, as contemplated under law, stored in a secured premises of GST godown and thereafter, the same was made available before the nearest Magistrate, who, on 04.11.2023 issued certificate of inventory and the same finds place at page no. 533 wherein details since application moved with prayers for preparation of inventory, availability of

weighing machine, presence of photographer, details of make and company of the camera, correctness of the weighing machine and inventory comprising of seven big boxes and one blue barrel are noted in the report. From para 4 onwards, in tabular form, details of weight of boxes, its contents are reflected. Even weightment of blue barrel seems to have been carried out. Learned Magistrate has, in his report, noted the time of commencement of verification of inventory i.e. since 10.30 a.m. up to 5.30 p.m. and in para 6, learned Judicial Magistrate First Class, 8th Court, Aurangabad has certified the correctness of the inventory, certified the photographs which are snapped in his/her presence. Learned Magistrate has also noted that entire *muddemal* was re-sealed in his/her presence in distinct boxes by applying necessary seals, signatures of all concerned being appended thereon in his/her presence. Certificate as required under Sub-section (3) of 52-A is also issued on the same day. In the light of such material, this Court is satisfied that verification and scrutiny of the seizure has been done before judicial authority specially empowered to do so.

Therefore, going by the above certification report of learned JMFC, it does not lie in the mouth of applicant that, there is breach or violation of procedure of seizure, collection of sample, storage etc. and that Section 52-A has not been complied.

16. Though there are umpteen and series of legal pronouncements touching the aspect of Section 52-A and are tried to be taken recourse to, however, neither of the contesting parties have referred to the judgment of Hon'ble Apex Court in the case of ***Narcotic Control Bureau v. Kashif*** [Criminal Appeal No. 5544 of 2024 (Special Leave Petition (Cri) No. 12120 of 2024)]. In this judgment, the Hon'ble Apex Court has dealt with the position pre and post insertion of section 52-A, as well as position after insertion of Standing Instructions and Standing Order modified in 2022. Above ruling is a authoritative dictum dealing with all aspects and points raised for seeking relief. After taking into account the legal precedents dealt and discussed therein, the Hon'ble Apex Court has culled out the following principles and the same are borrowed and re-produced hereunder for ready reference :

“39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may

ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone. (emphasis laid)

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the

course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

17. It would also be further fruitful to state that, very recently, again, on above aspect, there is yet another judicial pronouncement of the Hon'ble Apex Court in the case of ***Rajwant Sing v State of Haryana*** [Criminal Appeal No. 201 of 2019 decided on 09.01.2025], reiterating the above legal position that, mere non-compliance of procedure in seizure, sampling etc. can be of no avail to assert bail in a case of NDPS Act.

18. In the light of above dictum, this Court does not find any substance in the grounds urged before this Court for relief of bail. Some of the points need to be dealt and addressed only at the full fledged trial and not at the stage of bail. Considering the gravity and

seriousness of the offence, though charge sheet is filed, this Court is not inclined to extend benefit of bail as urged for. Hence, I proceed to pass the following order :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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