

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 729 OF 2024

Priyank Bhavesh Mehta

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Atul Sarpande a/w Mr. Kamlesh Satre, Mr. Nilesh Banger and Mr. Pranay Saraf, Advocates for Applicant.
- Ms. Megha S. Bajoria, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2025

P. C.:

1. Heard Mr. Sarpande, learned Advocate for Applicant and Ms. Bajoria, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 34 of 2023 registered at the instance of Anti Narcotic Cell, Kandivali for the offence punishable under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act).

3. At the outset Mr. Sarpande, learned Advocate for Applicant has argued that there is *prima facie* transgression of the provisions of Section 42(1) and (2) of the NDPS Act in the present case. He would draw my attention to page No.30 of the Application which is the Intelligence Information received by the prosecution

officer and noted down in the Station House Diary on 10:30 hrs. on 22.04.2023. *Prima facie*, when the said Intelligence Information which is reduced into writing is seen, it is seen that it has been received by Police Sipahi (Constable) Mr. Rokade at 10:30 hrs. from his secret source of information that Applicant and another person called Priyank has kept the alleged contraband for the purpose of sale in his house bearing Room No.601, Sun Darshan Apartment, Charkop Gaon, Kandivali (W), Mumbai. I have perused the same.

3.1. Next he has drawn my attention to page No.31 of the Application which is the intimation of the information received having been conveyed to the Superior Officer by Mr. Sanjay Khandagale the Assistant Commissioner of Police and not by the said Police Sipahi. He would point out that said information which was received was conveyed to the Superior Officer as contemplated under the provisions of Section 42(2) by Mr. Sanjay Khandagale, Assistant Police Inspector of the NCB, Mumbai. He would argue that information was received by Mr. Rokade, Police Constable and he ought to have been conveyed the same as contemplated under the provisions of NDPS Act. He would submit that the person who has received the information has not conveyed the said information whereas it is conveyed by another person and it would amount to hearsay.

3.2. In support of his above submissions, he has drawn my attention to the decision of this court in the case of ***Mohsin Kayyum Sayyed Vs. State of Maharashtra***¹. He would submit that in that case, information was received by Police Constable Mr. Bankar and noted by him in the Station House Diary but was conveyed to the superior by another officer called Mr. Dahifale on the information given to him by Mr. Bankar. He would submit that facts in that case are identical to the facts in the present case. He would submit that this Court while relying upon the decision in the case of ***Sanobar Shafiq Khotwal v. State of Maharashtra***²; ***Shafi Jahir Shaikh v. State of Maharashtra***³ and ***Mehadi Munavar Majid v. State of Maharashtra***⁴ held that the person who received the information must forward it to the superior and if it is not done so it would be a clear infraction of the provisions contemplated under Section 42 (2) of the NDPS Act. He has placed the said decisions before the Court. He has also argued that if there is a transgression or non-compliance of the provisions of Section 42(2) then the same can be looked into as a relevant fact to be taken into account while considering the Bail Application. For this he has relied on the decision of the Supreme Court in the case of ***Sarija Banu and Anr. v. State of Maharashtra***⁵ wherein the Supreme Court has held that

1 Bail Application No.4252 of 2024 decided on 10.03.2025.

2 Bail Application No.3337 of 2021 decided on 14.10.2022.

3 Bail Application No.5068 of 2024 decided on 04.02.2025.

4 Bail Application No.3493 of 2021 decided on 14.10.2022.

5 Bail Application No.3493 of 2021 decided on 14.10.2022.

compliance of Section 42 of the NDPS Act was mandatory and that was a relevant fact to be taken into account while considering the bail application. It is also seen that aforesaid pronouncement of the Supreme Court has been adverted to by this Court in the case of ***Kamlesh Harichand Rajpurohit v. State of Maharashtra***⁶ while releasing the accused person on bail, *inter alia*, on the ground of *prima facie* non-compliance of the mandate contained in Section 42 of the NDPS Act.

4. Ms. Bajoria, learned APP in her usual fairness would submit that when documents at page Nos. 30 and 31 are *prima facie* seen, it appears that the information has been received by Police Constable Mr. Rokade but it has been intimated in writing by Assistant Police Inspector Mr. Sanjay Khandagale. She would submit that even though Mr. Sanjay Khandagale has noted down the said information informed to him by Mr. Rokade, considering the decisions passed by this Court on the applicability of the mandatory provisions under Section 42 (2), the Court may pass appropriate order in accordance with law.

5. Mr. Sarpande, learned Advocate for Applicant has also persuaded the Court to consider one more aspect in the case, *inter alia*, pertaining to the labeling of the alleged contraband at the time of

⁶ Bail Application No.590 of 2023 decided on 18.03.2024.

seizure panchanama and there being a discrepancy in the same. He would also persuade the Court to consider the fact that the Certificate issued by the Magistrate under Section 52A (3) of the said Act with respect to sampling and inventory of the alleged contraband is not in consonance with the provisions of Rules 8, 10 and 18(1) and (2) of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022. He would draw my attention to the Certificate appended at page No.42 in this regard and submit that the said certificate has not been issued in Form 5 despite the applicability of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 being required to be strictly adhered to by the prosecution in the present case. He would therefore persuade the Court to consider the Applicant's case for bail as transgression of the provisions of Section 42(2) at the outset itself would vitiate the case of the prosecution with regard to the seizure of the alleged contraband.

6. Though Ms. Bajoria, learned APP would vehemently contend that there is no transgression with respect to the seizure procedure carried out by the prosecution, in view of my aforementioned *prima facie* observations with regard to transgression of Section 42(2) procedure which can be delineated from reading of page Nos.30 and 31 of the Application, I do not deem it necessary to

give my *prima facie* observations and findings on any of the other grounds which are pleaded by the Applicant lest it would vitiate the Prosecution case.

7. Once it is *prima facie* observed that the person who received the intelligence information with respect to the alleged contraband has not intimated the same and some other officer has done so, the same is impermissible under the statute. Even the said information is conveyed to any other officer and if that Officer intimates the information to the Superior Officer as is the present case it would amount to said officer having received the information on the basis of hearsay. This is not what is contemplated under the provisions of Section 42(2) of the NDPS Act. *Prima facie* it is seen that Mr. Rokade has noted down the Intelligence Information received in the Station House Diary at 10:30 hrs. and hence it was the duty of Mr. Rokade to have intimated the same to his Superior Officer in writing. This not having been done *prima facie* violates the statutory provisions and is clear infraction of Section 42(2) of the NDPS Act. This factor is required to be considered at the stage of Bail which having been considered, Application of the Applicant stands allowed.

8. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.50,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) Applicant shall co-operate with the conduct of trial

and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]