

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1222 OF 2024

Hareshwar Dnyaneshwar Patil

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Mahaling Pandarge for Applicant
- Mr. Sukanta A. Karmakar, APP for Respondent - State

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 3, 2025

P. C.:

1. Heard Mr. Pandarge, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with with C.R. No. 157/2022 (now Special Case No. 40/2023) registered at ANC Ghatkopar Unit, Mumbai for the offences punishable under Sections 8(c) r/w 22(b), 22(c) and 29 of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short "**NDPS Act**").

3. On 27.03.2025 after hearing the learned Advocates appearing for the parties, following order was passed:-

- "1. Mentioned at the time of rising of the Court.
2. Heard Mr. Pandarge, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.
3. In the present case, Applicant is one of the Accused arraigned as Accused No.2. There are all 4 accused persons. Accused Nos.1 and 2 were apprehended together by the raiding team on the specific Intelligence Report received by them about their suspicious movement with the alleged contraband. Accused No.1 was apprehended with 45 grams of MD whereas present Applicant – Accused No.2 was apprehended with 125 grams of MD i.e. the alleged contraband.
4. Statements were recorded and they informed that it was the Accused No.4 who had supplied the alleged contraband to Accused No.3 who had in turn supplied the alleged contraband to Accused Nos.1 and 2. In so far as Accused Nos.3 and 4 are concerned, they were arrested, but no contraband was seized from their conscious possession. The other 3 co-accused persons have been enlarged and released on bail. Their bail orders are appended at page Nos.162, 166 and 170 of the Application.
5. Mr. Pandarge, learned Advocate for Applicant would draw my attention to page No.42 of the Application and would submit that as per the entry made and noted in the station house diary by the prosecution officer / team, it is stated therein that specific secrete information was received from the First Informant and noted down by Police Hawaldar Mr. Gore. He would next draw my attention to page No.45 of the Application and would submit that intimation of the said information was received as contemplated under Section 42(2) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”) has been however informed by the Assistant Police Inspector Mr. Nagesh Chikne. Perusal of the said letter at page No.45 states therein that the information was infact received by Mr. Gore and thereafter informed to Mr. Nagesh Chikne. Prima facie this is impermissible and clear transgression of the provisions of Section 42(2) of the NDPS Act. The person who receives the information is required to forward the said information to the superior within a period of 72 hours as contemplated under the provisions of Section 42(2) of the NDPS Act. This is not having been done in the present case which is prima facie borne out from the two documents appended at page Nos.42 and 45 of the Application.
6. In the above prima facie facts and circumstances of the present case the Applicant before me has made out a case for bail.
7. This Court in the case of **Anil Kailashnath Choursiya Vs. The State of Maharashtra**¹ has considered the aforesaid position on the

1 Cri. BA. Nos.4148 of 2024 and 703 of 2025 – Decided on 24.03.2025.

*basis of the Supreme Court decision in the case of **Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police**².*

8. In that view of the matter, Mr. Karmakar, learned APP shall consider the aforesaid submissions made by the learned Advocate for Applicant and accordingly apprise the Court on the next adjourned date.

*9. List the Bail Application on Board on **03rd April, 2025** for hearing and disposal. To be placed on the **'Supplementary Board'**.*

4. Today in reply to the case of the Applicant, Mr. Karmakar, learned APP would submit that intimation of the information was given by Police Hawaldar Mr. Gore to Asst. Police Inspector Mr. Nagesh Chikne. He would submit that the person who received the information namely Mr. Gore was a junior and subordinate to Mr. Chikne and hence it was Mr. Chikne who was required to place the said information at the disposal of his superior officer which he has done and same is elucidated in the letter of intimation given by Mr. Chikne to his superior officer. He would persuade the Court to read the letter at page No. 45 in order to ascertain and confirm the fact that the said letter specifically mentions that information was indeed received by Mr. Gore and conveyed by him to Mr. Chikne who in turn communicated the same through the letter of intimation. He would therefore submit that compliance of the provisions of Section 42(2) of the NDPS Act is done and the same cannot be called as transgression.

² (2014) 12 SCC 266

5. In the case of *Sanobar Shafiq Khotwal v. State of Maharashtra*³, this Court has categorically considered a similar situation and has concluded that the person who receives the information must forward it to the superior officer by letter of intimation as contemplated under Section 42(2) of the NDPS Act. The Court held that in the case if the same has not been done by the person who received the information, it would be an infraction of the provisions of Section 42(2) of the NDPS Act as the person forwarding the information would be doing so on the basis of hearsay. This Court has thereafter while considering similar cases has also adverted to the said legal positions in the case of *Shafi Jahir Shaikh v. State of Maharashtra*⁴ & *Mehadi Munavar Majid v. The State of Maharashtra*⁵.

6. *Prima facie* it is seen that intelligence information is received and noted by Mr. Gore in the station house daily diary but the intimation has not been informed by him to the superior officer, rather intimation is informed by Mr. Chikne. Supreme Court in the case of *Sarija Banu Alias Janarthani Alias Janani & Anr. v. State through Inspector of Police*⁶ has held that compliance of the provisions of Section 42(2) is mandatory and that is to be taken into consideration while considering the Bail Application. This decision was adverted to

3 Bail Application No. 3337 of 2021 decided on 14.10.2022

4 Bail Application No. 5068 of 2024 decided on 04.02.2025

5 Bail Application No. 3493 of 2021 decided on 14.10.2022

6 (2004) 12 SCC 266

by this Court in the case of ***Kamlesh Harichand Rajpurohit v. The State of Maharashtra***⁷ while releasing the accused person on bail, *inter alia*, on the ground of transgression of the provisions of Section 42(2) of the NDPS Act. In that view of the matter, the case of the prosecution *prima facie* stands vitiated and benefit of doubt will have to be given to the Applicant. Needless to state that prosecution can prove the complicity of the Applicant in the crime during the trial. 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. 25,000/- with one or two sureties in the like amount;
- (ii) 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;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on

7 Bail Application No. 590 of 2023 decided on 18.03.2024

a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (viii) 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.

7. 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.

8. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR
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Date: 2025.04.04 11:16:16 +0530