

HARSHADA H. SAWANT  
(P.A.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.1431 OF 2024**

Abhishek Jaswant Singh

.. Applicant

**Versus**

The State of Maharashtra

.. Respondent

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- Mr. Rajiv M. Desai a/w. Ms. Seema Vishwakarma, Mr. Rajnath Pal for and Mr. Janak J. Padia, Advocates for Applicant.
- Ms. Rajeshree V. Newton, APP for Respondent.
- API – D. Patil, Kashimira Police Station.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : MARCH 05, 2025**

**P.C.:**

**1.** Heard Mr. Desai, learned Advocate for Applicant and Ms. Newton, learned APP for Respondent.

**2.** Applicant is incarcerated for offences punishable under provisions of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') from 19.05.2023. He is arraigned as Accused No.2. Apprehension of Applicant is that he was arrested alongwith other two accused persons travelling with him in the auto rikshaw. Alleged contraband was recovered from the dicky of the auto rickshaw weighing 42 kilograms of ganja which is admittedly commercial quantity. Present Applicant is a 20 year old young alleged offender. Mr. Desai would submit that if the entire charge-sheet is seen, there is absolutely no nexus whatsoever of the Applicant with Accused No.1 in

the present crime. He would submit that merely because Applicant was found seated in the auto rickshaw and the auto rickshaw was intercepted on specific intelligence report and seizure was effected under Section 42 of the NDPS Act, arrest of Applicant is *prima facie* illegal as he was travelling in the auto as a share passenger.

**3.** Though he would fairly submit that there is one antecedent against Applicant, he has placed before me the decision of this Court dated 16.12.2024 granting bail to Accused Nos.1 and 3 by this Court (Coram : Manish Pitale, J.). Reading of the order dated 16.12.2024, *prima facie* shows that there are two grounds considered by the Court for enlarging Accused Nos.1 and 3 on bail. Firstly the Court has observed that there is delay in carrying out the procedure contemplated under Section 52A but that ground may not be available to Applicant now in view of the decision of Supreme Court in the case of ***Narcotic Control Bureau Vs/ Kashif***<sup>1</sup>. However, second ground on which other co-accused have been granted bail is that after seizure of the alleged contraband by the prosecution instead of preparing the inventory panchanama as contemplated under the provisions of section 52A (2) of NDPS Act and making of application under the said provision to the concerned Magistrate for obtaining the certificate in tandem with the said application in Form - 5 as contemplated by Rules 8 and 18 (1) and (2) of the Narcotic Drugs And Psychotropic

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<sup>1</sup> 2024 INSC 1045.

Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022, it has not been done and hence the Court has enlarged the other co-accused on bail. Same is the case of the Applicant before me. The date of seizure and arrest are *prima facie* after coming into effect of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 dated 23.12.2022. In that view of the matter, there is clear transgression of provisions of Section 52A(2) and (3) of the NDPS Act which vitiates the recovery as also seizure.

**4.** Ms. Newton has persuaded me to consider granting her some time to file affidavit. However considering aforesaid *prima facie* observations, prosecution is given a period of one week to file its Affidavit. It is clarified that if Affidavit is not filed, this Court will not await and shall pass appropriate orders in the present Application as *prima facie* case is made out for grant of bail.

**5.** Stand over **12<sup>th</sup> March, 2025**. To be placed under the caption '**First on Board**'.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

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