

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1431 OF 2024

Abhishekh Jaswant Singh

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Rajiv Desai a/w. Ms. Seema Vishwakarma, Mr. Rajnath Pal and Mr. Janak J. Padia, Advocates for Applicant.
- Ms. Rajeshree V. Newton, APP for Respondent.
- Mr. Yogesh Kale, API, Kashimira Police Station (9867884663).

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025

P.C.:

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

2. After hearing Mr. Desai and Ms. Newton, learned APP on 05.03.2024, this Court passed the following order:-

“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**¹. 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 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 **12th March, 2025**. To be placed under the caption '**First on Board**'."

3. Applicant is indicted for offences punishable Sections 8(c) 20(b)(ii) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') alongwith other two co-accused in

¹ 2024 INSC 1045.

C.R.No.364 of 2023 registered with Kashimira Police Station. He is arrested on 19.05.2023 alongwith other co-accused on specific information having received by prosecution with respect to three accused persons carrying substantial quantity of alleged contraband namely ganja. The autorickshaw in which they were travelling alongwith alleged contraband was intercepted on specific intelligence report and seizure was effected.

4. Ms. Newton has drawn my attention to the Affidavit-in-Reply dated 10.03.2025 filed by Mr. Yogesh Suryabhan Kale, Assistant Police Inspector, Mira Bhayander Vasai Virar Police Commissionerate and would contend that considering the commercial quantity of alleged contraband having been seized namely 42 kilograms of ganja rigors of Section 47 of the NDPS Act would *prima facie* apply and it would be required to the Applicant to convince this Court that he was not involved in the crime. To that effect she would persuade me to consider the peruse paragraph No.18 of the Affidavit-in-Reply wherein there is one prior antecedent against Applicant under the NDPS Act on which he has been released on bail and would submit that in that view of the matter, Application be rejected.

5. After hearing Mr. Desai on the previous occasion in the aforementioned delineated order, this Court has raised certain *prima facie* questions, *inter alia*, pertaining to following of the procedure by

prosecution which require an answer. Rather it is seen that while considering twin Applications for Bail of the other two co-accused this Court by order dated 16.12.2024 decided the aforesaid question *prima facie* in light of decision of Supreme Court in the case of ***Union of India Vs. Mohanlal and another***² and released the other two co-accused on bail. Role of present Applicant is identical to that of the other co-accused who are already enlarged on bail by this Court and therefore I see no reason for his further incarceration. In view of the aforesaid *prima facie* observations as also in view of reasons stated in the order dated 16.12.2024, Applicant is released on bail subject to following 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

² (2016) 3 SCC 379.

his / her 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;

(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.

6. 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.

7. Bail Application No.1431 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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