

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2286 OF 2024

Prashant Kumar Rambabu Singh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Dilip Mishra a/w. Mr. Ayaz Khan, Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
 - Mr. R.M. Pethe, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2025.

P.C.:

1. Heard Mr. Mishra, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No. 167 of 2023 registered with Kopri Police Station for offences under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). There are total two accused indicted in the present crime. Present Applicant is indicted as Accused No.1 and is incarcerated since 25.08.2023 i.e. for 1 year 7 months and 9 days.

3. Briefly stated facts of the prosecution case are that on 24.08.2023 as per the intelligence information at around 16:50 hours the raiding team intercepted the Applicant and co-accused No.2. It is alleged that during their search 1 kg. 30 grams of alleged contraband charas was seized from the backpack of present Applicant and 1 kg. 30 grams of alleged contraband charas was seized from the bag carried by co-accused No.2. Total 2 kgs. 60 grams of alleged contraband was seized from both accused. Seizure was effected by the raiding party and panchnama was drawn on 24.08.2023 from 15:30 hours to 18:10 hours. FIR in the present crime was registered on 25.08.2023 at 00:47 hours (6 hours 37 minutes after completion of seizure panchanama) and Applicant is shown arrested on 25.08.2023 at 00:55 hours.

4. Mr. Mishra, learned Advocate for Applicant would at the outset submit that though Applicant is apprehended at 16:50 hours on 24.08.2023 and seizure panchanama was concluded at 18:10 hours on the same date however the label pasted on the envelope after completing seizure panchanama containing the alleged seized contraband at the time of seizure already has the printed C.R. Number fixated thereon even prior to registration of FIR 6 hours later which is evident from the photographs appended at page No.97 of the Application which were clicked during the inventory panchnama before the Magistrate. On the same page, he has drawn my attention to the label and would submit that the signatures of the two panchas and

the present Applicant have also not been taken by the raiding prosecution team which raises a cloud of suspicion on the seizure itself. He would submit that the FIR in the present case was registered after more than 6 hours from the conclusion of the seizure panchnama and hence the same vitiates the seizure and the effected prosecution case. In this regard, he has placed reliance on the decision delivered by this Court in the case of *Sarfaraj Abdul Majid Ahmed Vs. The State of Maharashtra*¹ wherein this Court has considered the said defence which is raised by Mr. Mishra.

4.1. Next he has drawn my attention to the discrepancy in the weight of the seized contraband mentioned in the seizure panchnama at page No.33 when read at page Nos.35 and 36 juxtaposed with the inventory panchnama at page No.91 when read at page No.92 as well as the Magistrate's certificate under Section 52A at page No.94. He would submit that seizure panchnama records the weight of the seized contraband as 1 kg 30 grams each totalling to 2 kgs 60 grams however the inventory panchnama and Magistrate's Certificate records the weight of the contraband as 1 kg 46 grams each. Hence he would submit that there is an apparent discrepancy which leads to discrepancies in the seizure, sampling and inventory procedure laid down under Sections 42 and 52A of the NDPS Act.

4.2. He would next submit that as per Rule 11(1) of the Narcotic

¹ BA No.4954 of 2024 alongwith connected matters decided on 24.03.2025

Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 in the case of contraband being charas, the quantity of sample required to be drawn during inventory panchnama before Magistrate cannot be less than 24 grams, however in the present case the quantity of samples drawn is 10 grams each and hence there is once again violation of the procedure prescribed under Rule 11(1).

4.3. He would submit that Applicant is in incarceration for the past 1 year 7 months and 9 days and trial has not yet commenced and even charges are not yet framed. He would submit that trial would not be completed in the near foreseeable future. Considering the above discrepancies in the seizure, sampling and inventory procedure evident *prima facie*, he would urge the Court to enlarge the Applicant on bail.

5. Mr. Pethe, learned APP has vehemently opposed the grant of bail to the Applicant. He would submit that there is ample material to corroborate the case of prosecution against Applicant. He has drawn my attention to the Chemical Analysis Report at page No.110 of the Application to submit that the Report concludes that the seized contraband is charas and in the present case it is commercial quantity, hence rigours of Section 37 of the NDPS Act would be attracted in the present case. He would submit that non-compliance of procedural provisions do not by itself entitle the accused to bail and procedural

violations must be assessed in context to the seized contraband and should not automatically result in bail or even acquittal. He would submit that procedural discrepancies are mere technical glitches which can be addressed by the prosecution in trial. Hence he would urge the Court to reject the bail Application.

6. In the present case it is seen that there is apparent discrepancy in the weight of the contraband mentioned in the seizure panchnama juxtaposed with the inventory panchnama. Another glaring discrepancy which is noticed by the Court is that in the seizure panchnama the contraband seized from the two accused persons was marked as “A” and “H” for the purpose of identification but during inventory when samples were drawn from the seized contraband they were marked as “A-1” and “A-2”, however in the Chemical Analysis Report it is seen that the Chemical Analysis Report describes the samples received from prosecution being marked as “A-1” and “H-1” and hence there is once again apparent discrepancy even in the identity of the contraband sent for chemical analysis by the prosecution apart from the weight of the alleged contraband being different.

7. Next it is seen that there is complete non-violation of Rule 11(1) of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 while drawing samples of the contraband during inventory panchnama before the Magistrate.

Rule 11(1) of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 reads as under:-

“11. Quantity to be drawn for sampling – (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.”

8. In the present case though the alleged contraband seized is charas, the said Rule 11 has not been complied with by the prosecution while drawing samples and the quantity of sample drawn is only 10 grams which ought to have been not less than 24 grams as specified in the said Rule. This Court has in the case of ***Chandrabhan Janardhan Yadav Vs. State of Maharashtra***² considered the applicability of the provisions of NDPS Act and the Rules and more specifically the reasons as to why the statutory provisions are required to be followed by the prosecution scrupulously which is in order to avoid vitiation of the prosecution case. However time and again this Court is faced with cases wherein the prosecution acts in complete dereliction of the statutory procedure laid down under the NDPS Act and this is one such case. In view of the above discrepancies and the samples not being drawn in accordance with the provisions of Rule 11(1) of the NDPS Act, the inventory panchnama drawn under Section 52A stands vitiated. The argument of the learned prosecutor that it is a mere

² Bail Application No.2254 of 2024 and connected matters decided on 04.03.2025.

technicality cannot be countenanced. If the statute requires the prosecution to act in a particular manner, there cannot be digression at the discretion of the prosecution. The conduct of the prosecution is like throwing caution to the wind in the present case.

9. This Court has also considered the issue of printed C.R. Number appearing on the label of seized contraband at the time of seizure which is prior in point of time before registration of FIR in the case of *Sarfaraj Abdul Majid Ahmed (supra)* and held that FIR Number is assigned by the Police Station after the FIR is registered and recorded and that it is an unique number which cannot be obtained prior to its registration and as such it leads to vitiation of the prosecution case.

10. In view of the glaring procedural discrepancies delineated hereinabove, Applicant has made out a case for grant of bail. Bail Application stands allowed on 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) 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 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.

11. 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.

12. Bail Application No.2286 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

HARSHADA
HANUMANT
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