

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

BAIL APPLICATION NO. 2338 OF 2024

Mohanlal Megaram Bishnoi	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Amit Icham, Advocate for the Applicant.

Ms. Anamika Malhotra, A.P.P. for the Respondent – State.

Mr. Machindra Prabhakar Dhapse (HC), Anti Narcotic Cell in
Hadapsar Police Station, Dist.- Pune, present.

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CORAM	:	N. R. BORKAR, J.
DATE	:	11th MARCH, 2025.

P.C.:

1. This is an application for regular bail.
2. The applicant came to be arrested in Crime No.1114 of 2023 registered at Hadapsar Police Station, Dist.- Pune, for the offences punishable under Sections 8(c), 17(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act.
3. On the date of incident which took place on 28.07.2023, the applicant was apprehended by the patrolling squad as the activities of the applicant were found to be suspicious. The search of the applicant was taken and 3.29 kg of Opium (Afeem) was found in the bag which the present

applicant was carrying.

4. The learned counsel for the applicant submits that there is non-compliance of Section 42 of the N.D.P.S. Act as the search of the applicant was taken by the constable. It is submitted that the applicant is in jail for more than one and half years and the trial has not commenced. It is submitted that there are no other criminal antecedents against the applicant.

5. On the other hand, the learned A.P.P. for the Respondent-State submits that it was a case of chance recovery. It is submitted that the applicant was found in the possession of the commercial quantity of the contraband and thus Section 37 of the NDPS Act would attract and unless, the conditions mentioned in the said Sections are satisfied, the applicant is not entitled for bail.

6. The Division bench of this Court in ***Rolf Michael Timerick Vs. State of Goa***¹ has held :

“10.The learned Public Prosecutor admitted before us that the aforesaid Notification holds the field and accordingly in the State of Goa officers below the rank of Assistant Sub-Inspector of Police in the Police Department are not empowered to conduct the search as contemplated under the N.D.P.S. Act. However, the submission of the learned Public Prosecutor is that in the present case the

¹ 1997 BCI 139

recovery of contraband was chance recovery and, therefore, the search cannot be held to be illegal and it cannot be said that the trial was vitiated. In this connection he referred to the deposition of P.W.9 Miss Sunita Sawant and the deposition of P.W.2 Navnath Naik and P.W. 3 Dharshan Varang. From the perusal of the testimony of these three witnesses, we are unable to appreciate the contention of the learned Public Prosecutor that the recovery of contraband was chance recovery. P.W.9 in her testimony clearly deposed that when the accused was asked about the contents of haversack, he became nervous and attempted to run. Thereafter presence of two panchas was secured and accused was asked whether he was carrying any incriminating articles in the bag to which he did not reply. P.W.9 suspected the accused carrying contraband and accordingly the accused was told by her that his search as well as search of his haversack bag has to be conducted. Accused was asked by her whether he wanted to be search before any Gazetted Officer or Magistrate, to which he declined. Then the accused was asked whether he wanted to have search of her, the panchas and the constable present, to which also the accused declined. It was only thereafter P.W.9 directed the Head Constable Mayenkar to take the search of the accused. It would, thus, be seen

that accused was searched only after it was suspected that he was carrying contraband and/or prohibited substances under the N.D.P.S. Act. The accused was made known and aware of his right under Section 50 of the N.D.P.S. Act whether he wanted to be searched before the Magistrate or Gazetted officer and only thereafter search was ordered to be conducted by Head Constable. All these circumstances can not be said to lead to inference that the recovery of contraband was chance recovery. The search was made suspecting that the accused possessed prohibited substance under the N.D.P.S. Act and, therefore, search ought to have taken place as contemplated under the Act and it ought to have been by an officer empowered under Section 42. P.W.9 Sunita Sawant who was empowered officer did not choose to conduct search and instead directed Head Constable to conduct the search, which was apparently illegal. PS.I. Sunita Sawant PW.9 ought to have known the legal position and the Notification issued by the Government that only officers mentioned therein are empowered to conduct search under Section 42. In terms of said Notification Head Constable was admittedly not authorised.”

7. Prima facie there appears to be substance in the

submission of the learned counsel for the applicant. Considering the said fact and as there are no other criminal antecedents against the applicant, I am inclined to release the applicant on bail

ORDER

- (i) Criminal Bail Application is allowed;
- (ii) The applicant is directed to be released on bail in connection with Crime No.1114 of 2023 registered at Hadapsar Police Station, Dist.- Pune, for the offences punishable under Sections 8(c), 17(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act on executing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iii) The applicant shall attend the concerned Police Station once in a month i.e. on first Saturday between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- (iv) The applicant shall not commit any other crime;
- (v) Application stands disposed of accordingly.

(N. R. BORKAR, J.)