

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2818 OF 2024

Jitendra Subhash Chavan

.. Applicant

Versus

The State of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 3832 OF 2024

Dinesh Mohan Kodmur

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Rajendra S. Bidkar, Advocate for Applicant in BA No.2818 of 2024.
 - Mr. Rajay Y. Gaikwad a/w. Mr. Sudhir Patole and Mr. Nilesh Mohite, Advocates for Applicant in BA No.3832 of 2024.
 - Mr. Dinesh J. Haldankar, APP for Respondent – State in both Bail Applications.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 04, 2025.

P.C.:

1. Heard Mr. Bidkar, learned Advocate for Applicant in Bail Application No.2818 of 2024; Mr. Gaikwad, learned Advocate for Applicant in BA No.3832 of 2024 and Mr. Haldankar, learned APP for Respondent – State in both Bail Applications.

2. Both the Bail Applications are taken together since the Applicants are indicted and apprehended in the same crime bearing C.R.No.19 of 2023 dated 24.01.2023 registered with Chittalsar Police

Station for the offences punishable under Sections 8(c), 22(c), 29 and 30 of the “**NDPS Act**”).

3. Applicants were arrested in a chance recovery and the alleged contraband are found in their custody and possession. In so far as the Applicant in Bail Application No.2818 of 2024 is concerned, he is arraigned as Accused No.1 and the alleged contraband recovered from him is 52 grams of MD as stated in the memorandum panchnama appended at page No.49 of the Application. On perusing the same, it is *prima facie* seen that what has been recovered from the Applicant are 5 pouches of the alleged contraband which have been mixed by the prosecution officers for the purpose of complying with the memorandum panchnama and weighing the alleged contraband together. This is impermissible under the provisions of the NDPS Act read with the NDPS Rules.

4. Similar is the case of the Applicant in Bail Application No.3832 of 2024 wherein recovery is effected in respect of 5 pouches of the alleged contraband which have been mixed by the prosecution officers for the purpose of quantifying and weighing the same. In so far as this aspect is concerned, it is stated in the memorandum panchnama which can be seen from the record itself.

5. Mr. Haldankar, learned APP would vehemently submit that the offence is of a serious nature as recovery of the alleged contraband

is of commercial quantity coupled with the fact that Applicants should not be released on bail as such they would be a menace to the Society as there is no guarantee that they would not repeat the offence. He would submit that the Applicants have antecedents in the past which need to be taken in account by the Court.

6. In the present case, there is a clear transgression of the provisions of Section 50 of the NDPS Act read with Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. That apart, both the learned Advocates have pressed the defence of not weighing the plastic polythene bag / pouch in which the alleged contraband was found in the possession of the Accused persons. Nowhere in the memorandum panchnama the exercise of weighing the precise weight of the alleged contraband and the plastic polythene bag in which it has been found has been effected, thus *prima facie* signifying transgression of the statutory provisions of the NDPS Act. When the alleged contraband is recovered from different pouches, it is imperative on the prosecution to draw a sample each from the recovered contraband pouch. Mixing of contraband is impermissible.

7. In this regard, reference is made to the following decisions of the Supreme Court and this Court:-

(i) *Union of India Vs. Bal Mukund and Ors.*¹;

¹ (2009) 12 SCC 161

- (ii) *Shabbir Usman Shaikh Vs. The Union of India and Anr.*²;
- (iii) *Sameer Rais Shaikh Vs. The State of Maharashtra*³;
- (iv) *Mukesh Kumar Saha Vs. The State of Maharashtra*⁴; and
- (v) *Zaheer Gayasuddin Shaikh Vs. The State of Maharashtra and Anr.*⁵.

8. In that view of the above *prima facie* observations and despite the fact that as per the prosecution case recovery of the alleged contraband is of commercial quantity which is barely and marginally more than the intermediate quantity in the present case and the exercise under Section 50 of the NDPS Act not having been complied with as per the Rules, both Applicants are entitled for grant of bail.

9. In view of the above, both Applicants are released on bail on the following terms and conditions:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- each with one or two sureties of the like amount;
- (ii) Applicants shall report to the Investigating Officer of concerned Police Station as and when called by the Investigating Officer;

2 BA No.731 of 2024 – Decided on 03.11.2023
 3 BA No.2108 of 2023 - Decided on 03.11.2023
 4 BA No.693 of 2023 – Decided on 30.11.2023
 5 BA No.2742 of 2023 – Decided on 14.03.2024

- (iii) Applicants 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 they do so it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicants.

10. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

11. Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

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