

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

CRIMINAL BAIL APPLICATION NO. 3839 OF 2024

Rita Ketan Shah	...Applicant
Versus	
The Union of India And Anr.	...Respondents

....

Mr. Akshay H. Bankapur a/w Mr. Prathamesh U. Kashikar,
Advocate for the Applicant.

Ms. Neha Patil, Special P. P. for the Respondent No.1 – NCB.

Mr. S. V. Walve, A.P.P. for the Respondent No.2– State.

....

CORAM	:	N. R. BORKAR, J.
DATE	:	13th FEBRUARY, 2025

P.C.:

1. This is an application for regular bail.
2. The applicant came to be arrested in Crime F. No. NCB/MZU/CR-30/2023 registered by Narcotics Control Bureau, Mumbai for the offences punishable under Sections 8(c) r/w Section 20(b)(ii)(c), 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).
3. On 04.11.2023, on the basis of secret information, the applicant and other co-accused were apprehended and they were found in possession of 46.4 Kg. Ganja.

4. The learned counsel for the applicant submits that 4.1 Kg. Ganja was allegedly found in possession of the applicant which is intermediate quantity. It is submitted that the search was conducted in violation of Section 50 of the NDPS Act. It is submitted that the applicant is in jail for a period of sixteen months and there are no other criminal antecedents against her. It is submitted that in similar circumstances, this Court has granted bail by order dated 21.06.2006 in Criminal Bail Application No.2177 of 2006 in the case of *Smt. Rashida Iqbal Khan Versus the State of Maharashtra* and order dated 19.08.2024 in Criminal Bail Application No.2002 of 2024 in the case of *Pournima Raju Rathod Vs. The State of Maharashtra*.

5. On the other hand, the learned Special P.P. for the Respondent-NCB submits that the commercial quantity of Ganja was found in possession of the present applicant and other co-accused. It is submitted that in such situation the applicant cannot be released on bail unless he satisfies the conditions mentioned under Section 37 of the NDPS Act. In support of her submission, the learned Special P.P. has relied

upon the decision of the Gujarat High Court at Ahmedabad in the case of *Pragnesh Pravinbhai Thummar Versus The State of Gujarat* in Criminal Misc. Application (for Regular Bail) No.348 of 2025 dated 04.02.2025.

6. In the case of *Smt. Rashida Iqbal Khan Versus the State of Maharashtra* (supra) the applicant therein was found in possession of 13.500 Kg. Ganja and co-accused therein was found in possession of 11.8 Kg. of Ganja. This Court relying upon the Judgment of the Hon'ble Apex Court in the case of *Amarsingh Ramjibhai Barot Vs. State of Gujarat*¹ has held that Section 29 of the NDPS Act could not be applied where two individuals found together were carrying recovered substances. This Court held that offences involving commercial quantity will have to be established either with the aid of Section 29 of the NDPS Act or Section 120-B of the IPC and thus, the applicant therein was released on bail. In *Pournima Raju Rathod Vs. The State of Maharashtra* (supra) this Court has held that the waiver of the right under Section 50 of the NDPS Act has to be in writing and as in the said

¹ 2005 SCC (Cri.) 1804

matter there was no waiver in writing, the applicant therein was released on bail.

7. In the present case according to the prosecution all the accused were found in possession of 46.4 Kg. Ganja. However, the fact remains that the present applicant was found in possession of 4.1 Kg. which is intermediate quantity. Apart from it, from the seizure Panchanama it appears that the applicant was not knowing the English language. However, Section 50 notice was given in the said language. There is nothing to show that the contents of the said notice were explained to the applicant in vernacular language.

8. Considering the overall facts and circumstances and in absence of any other criminal antecedents, 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 F. No. NCB/MZU/CR-30/2023 registered at Narcotics Control Bureau, Mumbai for the offences punishable under Sections 8(c) r/w Section 20(b)(ii)(c), 28 & 29 of the NDPS 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 office of the NCB, Mumbai 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) It would be open to the Respondent – NCB to file an application for cancellation of bail if the applicant commits any other crime.

(vi) Application stands disposed of accordingly.

(N. R. BORKAR, J.)