

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4038 OF 2024

Gopal Amrutlal Sevak	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Ayaz Khan a/w Mr. Dilip Mishra a/w Zehra Charania and Mallika Sharma for Applicant
 - Ms. Shilpa K. Gajare-Dhumal, APP for State
 - PSI Sonkamble, Mahim Police Station is present

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 22, 2025

P. C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Ms. Gajare-Dhumal, learned APP for State.
2. Applicant - accused has filed the present Application for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in connection with Crime No. 85/2024 registered with Mahim Police Station, Mumbai under Sections 8(c) and 20(b)(2)(c) of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short, "**NDPS**").
3. Applicant has been indicted in a Crime under NDPS Act which took place on 03.03.2024 which according to panchnama report itself disclosed involvement of two persons. Ironically prosecution recorded

statements of 18 persons but none of those statements dwell upon the fact that who is the owner of the premises from where the contraband has been seized. The contraband in question is 23 Kgs. of Ganja contained in two bags. However precursor to the seizure is the fact of a chance recovery when Applicant was found walking on the road. The Police Constable patrolling the area in the afternoon at around 02:00 p.m. found movement of the Applicant suspicious. Applicant before me is a person who deals in scrap items (भंगारवाला). Police persons thought that he would be carrying contraband and therefore immediately took his search without following the due procedure prescribed under Section 42 of the NDPS Act. Prosecution case is that Applicant thereafter led the police party to a nearby place called Bhatwadi and then led them to Room No. 1 situated therein and pointed out the alleged substantial quantity of contraband stored / lying in the room on the first floor. On being asked as to who was the owner of the said room No. 1 situated on the first floor in Bhatwadi Chawl Zopadpatti, there is no answer. No investigation is done. Panchnama report however clearly shows involvement of two persons but it has recorded the name of only the Applicant as seen in the panchnama report as also in the FIR. Other documentary evidence placed on record by the prosecution shows that this is not a chance recovery but they had a pre-raid information. If this is the case then

the procedure under Section 42 of the NDPS Act is to be followed and the details of the person to whom the said premises belonged to as also who was the occupant or inmates of the said room. Nothing has been done in that regard by the prosecution. Even the details of the owner of the premises and the room or the person occupying that room are not before the Court. There is one more reason as to why this Court has kept this matter for hearing on out of turn basis for grant of bail to the Applicant. It is seen that Applicant's daughter is suffering from 100% deafness due to bilateral profound mixed hearing loss. She is 11 years old. She requires medical treatment. The disability certificate issued by Ali Yavar Jung National Institute for the Hearing Handicapped is placed on record. In order to ascertain the veracity of the disability, this Court asked the prosecution to prepare a report pursuant to the order dated 07.01.2025. Pursuant thereto report has been placed before me which is dated 21.01.2025. It is a detailed report whereby prosecution has investigated not only with the Institution but also with the School which is attended by the daughter of the Applicant. Applicant has also one son who is 7 years old. Wife of the Applicant is presently providing care and support to them. She is not earning. One of the reason why this Court is inclined to release the Applicant on bail is the fact that the family of the Applicant would otherwise be vulnerable to the vagaries of the circumstances in the

present case and that should not be allowed to happen in any case. Hence, in view of aforesaid reasons, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 10,000/- with one or two sureties in the like amount;
- (ii) Applicant shall cooperate with the trial since charge-sheet has already been filed 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;
- (iii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (iv) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vi) Any infraction of the above conditions shall entail revocation of this order.

4. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

5. In view of the above directions, Bail Application stands allowed and disposed.

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[MILIND N. JADHAV, J.]

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