

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4252 OF 2024

Mohsin Kayyum Sayyed .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Kamlesh Satre, Advocate for Applicant.
 - Ms. Rajeshree V. Newton, APP for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 10, 2025

P.C.:

1. Heard Mr. Satre, learned Advocate for Applicant and Ms. Newton, learned APP for Respondent.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.51 of 2021 registered with Azad Maidan Police Station for offences punishable under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. After hearing learned Advocate for Applicant and learned APP for Respondent on 25.02.2025, the following order was passed:-

"1. Heard Mr. Satre, learned Advocate for Applicant and Ms. Newton, learned APP for State.

2. At the outset, Mr. Satre would submit that there is transgression of the provisions of Section 42 of the NDPS Act in the intelligence report which was received by the prosecution. My attention is drawn to page No. 26 of the Application wherein the station diary entry at 12:40 p.m. records receipt of the intelligence report through the

informant by Police Constable Mr. Bankar. He would submit that the information which has been conveyed to the superior on the same day is by Police Inspector Mr. Rajendra Dahiphale of the same Police Station. He would submit that this itself is transgression which is noticed on the face of record and clear infraction of the provisions of Section 42 of the NDPS Act. In support of his submissions, he has placed reliance on the following decisions of this Court:-

- (i) Sanobar Shafiq Khotal v. State of Maharashtra¹;*
- (ii) Shafi Jahir Shaikh v. State of Maharashtra²;*
- (iii) Mehadi Munavar Majid v. The State of Maharashtra³;*

2.1. *Copy of the decisions are handed over to learned APP. She shall take appropriate instructions and apprise the Court on the next adjourned date.*

3. *Stand over to **4th March, 2025 at 2:30 p.m.***”

4. In response to the said order, learned APP has filed Affidavit of Mr. Amol Subhash Gavali, age 44 years, API presently attached to Azad Maidan Unit Police Station in support of prosecution case in order to explain that was adopted by the prosecution pursuant to the intelligence information received in the present case.

5. Perusal of the said Affidavit *prima facie* shows that the information which was received by Mr. Bankar noted by him in the Station house diary but was later informed by him to Mr. Dahifale. There are two station diary entries to which my attention is drawn by Ms. Newton, learned APP in that regard. One is at 12:30 p.m. and other is at 12:50 p.m.. Reason for police constable Bankar to have informed Mr. Dahifale is unexplained therein.

6. However what is crucial is compliance of the provisions of Section 42(1) of NDPS Act which states that the person who receives

the information or his immediate superior is required to send the intimation letter of the intelligence information / input received in respect of the person who would come with the alleged contraband to his superior.

7. In the present case, the intelligence information is received and noted by Mr. Bankar but intimation is not been sent by him. Intimation is sent by Mr. Dahifale. Mr. Dahifale is the Prabhari Police Inspector as stated in the Affidavit which is filed by the prosecution and he was holding additional charge on that day in the Police Station. He was admittedly not the immediate superior of Mr. Bankar either at that time.

8. In that view of the matter, neither Mr. Dahifale has received the information directly to qualify him to take steps under Section 42(1) and 42(2) of the NDPS Act and therefore the above alleged transgression brought out by Mr. Satre needs to be accepted. The present case is on *prima facie* facts fully covered by decisions of this Court in the cases of ***Sanobar Shafiq Khotwal v. State of Maharashtra*¹**; ***Shafi Jahir Shaikh v. State of Maharashtra*²** and ***Mehadi Munavar Majid v. The State of Maharashtra*³**; which are delineated in the aforementioned order. In the case of ***Sanobar Shafiq Khotwal*** (*1st supra*) it was enunciated that one who receives the information must

1 Bail Application No.3337 of 2021 decided on 14.10.2022.

2 Bail Application No.5068 of 2024 decided on 04.02.2025.

3 Bail Application No.3493 of 2021 decided on 14.10.2022.

forward it to the superior himself. Court held that since there was a clear infraction of the said provision, breach of Section 42(2) was accepted by Court. Further in the case of *Sarija Banu & Anr. Vs. The State of Maharashtra*⁴, Court held that compliance of Section 42 of the NDPS Act was mandatory and that was a relevant fact to be taken into account while considering the Bail Application. The aforesaid pronouncements were adverted to by this Court in the case of *Kamlesh Harichand Rajpurohit Vs. The State of Maharashtra*⁵ while releasing the accused person on bail, *inter alia*, on the ground of *prima facie* non-compliance of the mandate contained in Section 42 of the NDPS Act.

9. Hence, Bail Application is allowed 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.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

⁴ Bail Application No.3493 of 2021 decided on 14.10.2022.

⁵ Bail Application No.590 of 2023 decided on 18.03.2024.

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 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.

10. 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.

11. Bail Application No.4252 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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