

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.4288 OF 2024

Nadeem Mohammed Shah

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Munira Palanpurwala a/w Ms. Kainat Sayed, Ms. Sumaiya Khan and Ms. Deepa Amati, Advocates for Applicant.
- Ms. Rajeshree V. Newton, APP for State.
- API – Karke, Trombay Police Station, Mumbai present.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 05, 2025

P. C.:

1. Heard Ms. Palanpurwala, learned Advocate for Applicant and Ms. Newton, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No.460 of 2023 registered with Trombay Police Station for the offence under Sections 8(c) read with 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS Act**").

3. On 2nd April, 2025 after hearing the learned Advocates at the Bar following order was passed:-

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

2. Case of prosecution is that Applicant is indicted for offences under Narcotic Drugs and Psychotropic Substances Act,

1985 (for short 'NDPS Act'). Primary grievance expressed by Ms. Palanpurwala is that intelligence information was received by Police Constable Mr. Sanjay Avhad at 20:45 hours but same has been forwarded to superior officer as contemplated under Section 42(2) of the NDPS Act by police sub-inspector – Sharad Nanekar.

3. That apart, she would submit that the information was received by Police Constable – Mr. Avhad at 20:45 hours, but forwarding of the information to the superior officer *prima facie* shows that information was received at 05:00 a.m. in the morning. She would submit that Applicant is incarcerated for past one and half year for having been apprehended with admittedly commercial quantity of alleged contraband namely one and half kilograms of Charas. Case made out by Applicant which is *prima facie* covered by decisions of this Court in the case of **Faisal Bin Saber Vs. Dharmendra Kumar Rajput Senior Intelligence Officer and Anr.**¹.

4. Learned APP shall ascertain the veracity of statements made by Ms. Palanpurwala from prosecution case and accordingly apprise the Court on the next adjourned date.

5. Considering that Applicant is having no antecedents and request made by Ms. Palanpurwala is only child of parents and both parents have suffered a paralytic stroke, Application for bail should be heard on the next adjourned date which shall be noted by prosecution.

6. Stand over to **23rd April, 2025**. To be placed on the '**Supplementary Board**'."

4. Today, when the learned APP - Ms. Newton has been asked to respond to the contentions stated in paragraph No.3 of the aforesaid order, she would persuade the Court to consider the facts emanating from the prosecution case. However, if the same is *prima facie* seen they do no enure to the benefit of the prosecution at all. Appended at page No.215 is a lined register in which entry made by Sanjay Sukhlal Awhad Police Hawaldar of the intelligence input information received by him on 26.09.2023 at 20:45 hours. The said intelligence input information states that at midnight i.e. 12:10 pm to

¹ Bail Application No.4439 of 2024 decided on 10.03.2025.

12:30 pm the Applicant who is the alleged supplier of contraband would be arriving at Patra chawl, Maharashta Nagar, Mankhurd, Mumbai to sell the contraband to purchasers. Acting on the said intelligence input the said information has been intimated by the Police Sub Inspector – Sharad Nanekar to his superior authority namely the Assistant Commissioner of Police by letter dated 26.09.2023 appended at page No.217 of the Application.

5. Though Ms. Newton would persuade the Court to consider the fact that intimation given to the superior officer specifically refers to the information received by Mr. Awhad still in terms of provisions of sub Section 2 of Section 42 of the NDPS Act and various ruling of the Supreme Court and this Court, the person who receives the information is required to transmit and intimate the information to his superior officer. Any other person who is receiving and conveying the information from the person who has actually received the secret input intelligence would fall in the category of hearsay and therefore it is impermissible for the officer who has not received the intelligence information to forward the same to his superior officer in contemplation of subsection 2 of Section 42 of the NDPS Act. That apart in the information which has been forwarded it is *prima facie* seen that intelligence input information is shown to have been

received at 05:00 am which is not in consonance with the information actually received by Mr. Sanjay Awhad at 20:45 hours.

6. The above case is covered by the decisions of this Court in the case of *Sanobar Shafiq Khotwal Vs. State of Maharashtra*², this Court has categorically considered a similar situation and has concluded that the person who receives the information must forward it to the superior officer by letter of intimation as contemplated under Section 42(2) of the NDPS Act. This Court held that in the case if the same has not been done by the person who received the information, it would be an infraction of the provisions of Section 42(2) of the NDPS Act as the person forwarding the information would be doing so on the basis of hearsay. This Court has thereafter while considering similar cases has also adverted to the said legal position in the case of *Mehadi Munavar Majid Vs. The State of Maharashtra*³, *Shafi Jahir Shaikh Vs. State of Maharashtra*⁴, *Anil Kailashnath Choursiya Vs. The State of Maharashtra*⁵ and *Hareshwar Dnyaneshwar Patil Vs. The State of Maharashtra*⁶ on the basis of the Supreme Court decision in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*.

² Cri. Bail Application No. 3337 of 2021 - Decided on 14.10.2022.

³ Cri. Bail Application No. 3493 of 2021 - Decided on 14.10.2022.

⁴ Cri. Bail Application No. 5068 of 2024 - Decided on 04.02.2025.

⁵ Cri. BA. Nos.4148 of 2024 and 703 of 2025 – Decided on 24.03.2025.

⁶ Cri. Bail Application No. 1224 of 2024 0- Decided on 03.04.2025.

7. The aforesaid transgression having been noticed *prima facie* vitiates the prosecution case. Needless to state that Supreme Court in the case of ***Sarija Banu Alias Janarthani Alais Janani and Anr. v. State through Inspector of Police***⁷ has held compliance of Section 42 is mandatory and it is a relevant fact required to be considered while considering a Bail Application.

8. In view of the above *prima facie* observations, 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.25,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) 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;

⁷ (2004) 12 SCC 266

- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 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;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) 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.

9. 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.

10. Bail Application is allowed and disposed.

PR. Rajput

[MILIND N. JADHAV, J.]