

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4907 OF 2024

Sandesh Ashok Kharat	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO. 3441 OF 2024

Samsher Gulmohar Khan	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Shekhar S. Bhandary for Applicant in BA 4907/2024
 - Mr. Rajendra S. Bidkar for Applicant in BA 3441/2024
 - Ms. Megha S. Bajoria, APP for State
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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 7, 2025

P. C.:

1. Heard Mr. Bhandary, learned Advocate for Applicant in BA 4907/2024, Mr. Bidkar, learned Advocate for Applicant in BA 3441/2024 & Ms. Bajoria, learned APP for State.

2. The Applicants in both Applications are co-accused in the same crime. Both learned Advocates draw my attention to the steps taken by the prosecution under Section 42(1) of the NDPS Act, as the crime in question was preceded by intelligence information received by the police station. Intelligence information received has been apprised by

the concerned police station to the Competent Authority vide letter dated 16.12.2023 but when the said letter appended at page No. 239 is seen, the said intelligence is not reduced in writing in the said letter rather what is stated in the letter is that the true copy of the station diary wherein the said information has been reduced in writing is appended and enclosed with the said letter dated 16.12.2023. If that be the case in the chargesheet which is filed, the said enclosure / annexure ought to have been part of the letter dated 16.12.2023. That is not so. Nevertheless prosecution shall take cognizance of this and also apprise the same to the Court on the next adjourned date failing which it amounts to transgression of the prescribed procedure under Section 42(1) of the NDPS Act.

3. Further when the General Diary Details which are appended on the next page are seen, name of the person /officer who has received the information as stated therein is different and other than the person who has actually received the information. Both the learned Advocates would draw my attention to the charge which is stated at page No. 240. When it is read it does not match with the information which has been conveyed from the concerned police station. That apart the General Diary details which are appended at page No. 240 do not bear the signature neither letter dated 16.12.2023 bears the acknowledgment and hence it is argued that procedure carried out

under Section 42 of the NDPS Act is a suspect and the entire search and seizure is vitiated.

4. Aforesaid aspects are extremely crucial considering the compliance and procedural requirement under NDPS Act. Both the learned Advocates appearing for Applicants shall take appropriate instructions and accordingly inform the Court to consider the Bail Application and pass appropriate orders on the next adjourned date.

5. Stand over to **13th March, 2025.** To be placed on **Supplementary Board.**

Amberkar

[MILIND N. JADHAV, J.]

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