

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4954 OF 2024

Sarfaraj Abdul Majid Ahmed	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.5190 OF 2024

Mahfooz Aalam S/o	
Istiyak Ahmed Choudhary	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.5386 OF 2024

Mohd Mazhar Manzoor Ahmed Khan	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.5471 OF 2024

Kuldeep Lalchand Gupta	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.770 OF 2025

Asha Adiram Lingam	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.2634 OF 2024

Mohammed Ali Habibullah Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Kamlesh M. Satre a/w. Mr. Amol M. Thombre and Mr. Vikas Chauhan, Advocates for Applicant in Bail Application Nos.4954 of 2024; 770 of 2025.
 - Mr. Sherali S. Khan, Advocate for Applicant in Bail Application Nos.5190 of 2024 and 5386 of 2024 and 2634 of 2024.
 - Mr. Amol M. Thombre a/w. Mr. Kamlesh M. Satre, Advocates for Applicant in Bail Application No.5471 of 2024.
 - Ms. Mahalakshmi M. Ganapathy, APP for Respondent in Bail Application No.4954 of 2024.
 - Mr. Sukanta A. Karmakar, APP for Respondent in Bail Application Nos.5190 of 2024; 5386 of 2024 & 770 of 2025.
 - Mr. Rushikesh M. Pethe, APP for Respondent in Bail Application No.5471 of 2024.
 - Mr. Hitendra J. Dedhia, APP for Respondent in Bail Application No.2634 of 2024.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2025

P.C.:

- 1.** Heard learned Advocates appearing for Applicants and learned APPs appearing for Respondent in respective Bail Applications.
- 2.** On 24.02.2025 after hearing the learned Advocates for the parties, this Court passed the following order:-

“1. Heard learned Advocates appearing for Applicants and learned APPs appearing for Respondent in respective Bail Applications.

2. Common order is passed in Bail Application No.4954 of 2024, Bail Application No.5190 of 2024 and connected matter; Bail Application No.5471 of 2024; Bail Application No.770 of 2025 and Bail Application No.2634 of 2024.

3. The common point raised by both learned Advocates is that printed label of the First Information Report (for short 'FIR') is appended on the seized contraband packet at the time of seizure panchnama.

4. The likely answer given by learned prosecutors Ms. Ganapathy, Mr. Pethe and Mr. Karmakar appearing in these matters is that when such an action is involved the Officer generally calls for and take the next serial number of the FIR which is going to be lodged from the Police Station and the label is accordingly printed and put accordingly.

5. Another issue argued by Mr. Pethe is that this Court (Coram : N. J. Jamadar, J.) in its decision in the case of **Sunday Eziko Ezagwu Vs. The State of Maharashtra**¹ has taken the view that this aspect is procedural in nature and it would be not vitiate the seizure procedure of alleged contraband and it would not be in contravention of any provisions of the Narcotics and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). However it is seen in that judgment that while appending the label on the seized contraband the number of FIR was kept blank and it was subsequently added in handwriting and that is why Court came to that conclusion. In the present cases at hand, except one, it is argued that the printed label of CR number is affixed at the time of seizure itself before the FIR is even lodged. The above issue needs to be considered and decided as it arises in several cases before Court and is taken up as a ground in defence by the accused persons.

6. In so far taking the serial of next FIR is concerned, a Division Bench of this Court in the case of **Babita V/s. State**² has already taken a view in paragraph Nos.5 and 6 of the said judgment. Prosecution is directed to consider the same and accordingly argue the matter. I direct Respondent – State to file appropriate Affidavit in all the 5 matters explaining their position of affixing a pre-printed label with CR number on the seized contraband at the time of seizure which reflects the number of FIR at the time of seizure before lodging the FIR. The Affidavit be filed within a period of two weeks from today. I propose to take up these matters immediately for hearing thereafter.

7. Mr. Karmakar would inform the Court that in so far Bail Application No.4954 of 2024 is concerned, printed number of FIR does not appear and it is hand written. Whatever it may be the same be clarified in the Affidavit-in-Reply with appropriate submissions. Copy shall be served in advance on Advocates for Applicant on or before 07.03.2025.

8. It is directed that the aforementioned 5 Bail Applications be tagged together in view of the common question raised in them.

9. Stand over to 10th March, 2025. To be placed under the caption 'First on Board'."

1 Bail Application No.3318 of 2023 decided on 29.02.2024.

2 1993 SCC Online BOM 460.

3. Common issue as delineated in the above order is involved in all matters, they are disposed by this common order.

4. The common defence taken by all Applicants is that a false and fabricated case is made out against Applicants as the Crime Number which is registered after the seizure panchnama is completed finds mention in printed / handwritten form on the label pasted on the envelope / box containing the seized contraband and hence the seizure becomes suspect.

BAIL APPLICATION NO. 4954 OF 2024:

5. Bail Application No.4954 of 2024 is filed by Applicant - Sarfaraj Abdul Majid Ahmed in connection with Special LAC No.109 of 2024 registered with Shahunagar Police Station for offences under Sections 8(c) read with 21(c) of the Narcotics and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

6. Briefly stated on 31.03.2024 Applicant was intercepted by the patrolling team in a chance recovery with commercial quantity i.e. 270 grams of alleged contraband Herion. Crime is registered on 31.03.2024 at 23:05 hours which is seen from the C.R. appended at page No.44 of the Application. Seizure panchnama is appended at page No.24 of the Application. From the perusal of the said panchnama it is seen that the seizure panchnama was drawn on 31.03.2024 between 17:30 hours and 20:30 hours. Interestingly, if the

photograph taken during inventory panchnama appended at page No.70 of the Application is seen, it is seen that the label appended on the envelope / box containing seized contraband at the time of seizure already has the printed C.R. Number affixed thereon even prior to its registration. That apart it is seen that the said label does not contain the signature of the accused person which is mandatory as per the provisions of the NDPS Act.

7. Apart from the common defence, Mr. Satre, learned Advocate for Applicant would submit that there is non-compliance of provisions of Section 50 of the NDPS Act as the intimation letter does not bear the endorsement of the Applicant either, he having waived off specifically his right to be searched before the Magistrate or gazetted officer. He would submit that there is also non-compliance of provisions of Section 42 of the NDPS Act as police officers did not procure a search warrant before conducting the search even though seizure was effected after sunset. He would submit that such non-compliance of the statutory provisions vitiates the seizure effected and the case of prosecution.

8. Next he would submit that the Chemical Analysis Report appended at page No.80, when read at page No.81 of the Application reveals that the contraband allegedly seized from the Applicant is not Herion but Morphine and hence it is *prima facie* evident that a false

case has been manufactured and fabricated against Applicant. Hence he would urge the Court to enlarge the Applicant on bail.

9. Ms. Ganapathy, learned APP appearing for State in Bail Application No.4954 of 2024 has placed on record Affidavit dated 05.03.2025 filed by API Mr. Satish Maske pursuant to order dated 24.02.2025 delineated herein above. She would submit that if the raid takes place and there is recovery of any contraband, then for the further identification of the process, CR Number is obtained by the seizing officer from the Crime Register in-charge as per the running sequence on phone in advance and it is printed and affixed on the seized contraband and after coming to the Police Station, the FIR is registered. Regarding the change in nomenclature and identity of the alleged contraband, no explanation is offered by the prosecution.

BAIL APPLICATION NO. 5190 OF 2024:

10. Bail Application No.5190 of 2024 is filed by Applicant - Mahfooz Aalam S/o Istiyak Ahmed Choudhary in connection with C.R. No.47 of 2024 registered with Meghwadi Police Station for offences under Sections 8(c) read with 22 of the NDPS Act.

11. Briefly stated on 14.01.2024 Applicant was intercepted by the patrolling team in a chance recovery with commercial quantity i.e. 12 bottles of 100 ml each of Onerex TM containing alleged contraband Codeine Phosphate & Tripolidine Hydrochloride Syrup. Crime is

registered on 14.01.2024 at 15:06 hours which is seen from the C.R. appended at page No.27 of the Application. Seizure panchnama is appended at page No.46 of the Application. From the perusal of the said panchnama it is seen that the seizure panchnama was drawn on 14.01.2024 between 11:10 hours and 13:35 hours. Interestingly, if the photograph taken during inventory panchnama appended at page No.94 of the Application is seen, it is seen that the label appended on the envelope / box containing the seized contraband at the time of seizure already has the printed C.R. Number affixed thereon even prior to its registration. Facts are similar in this regard to the earlier case.

12. Apart from the common defence, Mr. Khan, learned Advocate for Applicant would submit that there is non-compliance of provisions of Section 50 of the NDPS Act as the intimation letter does not bear the endorsement of the Applicant specifically waiving off his right to be searched before the Magistrate or gazetted officer. He would submit that such non-compliance of the statutory provisions vitiates the prosecution case considering the stringent provisions of Section 37 of NDPS Act being applicable for confiscation of commercial quantity.

BAIL APPLICATION NO. 5386 OF 2024:

13. Bail Application No.5386 of 2024 is filed by Applicant - Mohd Mazhar Manzoor Ahmed Khan in connection with C.R. No.229

of 2024 registered with Shivaji Nagar Police Station for offences under Sections 8 read with 22 of the NDPS Act. There are total two accused in the crime and Applicant before me is Accused No.1.

14. Briefly stated on 21.03.2024 Applicant was intercepted by the patrolling team in a chance recovery with commercial quantity i.e. 15 bottles of 100 ml each of Choco Cough Syrup containing alleged contraband Codeine Phosphate & Tripolidine Hydrochloride Syrup. Crime is registered on 21.03.2024 at 08:01 hours which is seen from the C.R. appended at page No.22 of the Application. Seizure panchnama is appended at page No.34 of the Application. From the perusal of the said panchnama it is seen that the seizure panchnama was drawn on 21.03.2024 between 05:20 hours and 06:15 hours. Interestingly, if the photograph taken during inventory panchnama appended at page No.64 of the Application is seen, it is seen that the label appended on the envelope / box containing the seized contraband at the time of seizure already has the printed C.R. Number affixed thereon even prior to its registration.

15. In this case also apart from the common defence, Mr. Khan, learned Advocate for Applicant would submit that there is non-compliance of provisions of Section 50 of the NDPS Act as the intimation letter does not bear the endorsement of the Applicant specifically waiving off his right to be searched before the Magistrate

or gazetted officer. He would submit that such non-compliance of the statutory provisions vitiates the seizure and prosecution case. He would submit that Accused No.2 has been enlarged on bail by the Sessions Court and hence would urge the Court to consider the Application of the Applicant on the principle of parity. Hence he would urge the Court to enlarge the Applicant on bail on the above grounds.

BAIL APPLICATION NO. 5471 OF 2024:

16. Bail Application No.5471 of 2024 is filed by Applicant - Kuldeep Lalchand Gupta in connection with C.R. No.108 of 2024 registered with Shivaji Nagar Police Station for offences under Sections 8 readwith 22 of the NDPS Act. There are two accused in the crime. Applicant before me is Accused No.1.

17. Briefly stated on 08.02.2024 Applicant was intercepted by the patrolling team in a chance recovery with commercial quantity i.e. 25 bottles of 100 ml each of New Welcyrex Cough Syrup containing alleged contraband Codeine Phosphate & Tripolidine Hydrochloride Syrup. Crime is registered on 08.02.2024 at 06:05 hours which is seen from the C.R. appended at page No.22 of the Application. Seizure panchnama is appended at page No.34 of the Application. From the perusal of the said panchnama it is seen that the seizure panchnama was drawn on 08.02.2024 between 03:15 hours and 04:50 hours. Interestingly, if the photograph taken during inventory panchnama

appended at page No.49 of the Application is seen, it is seen that the label appended on the envelope / box containing seized contraband at the time of seizure already has the printed C.R. Number affixed thereon even prior to its registration at 06:05 hours.

18. Apart from the common defence, Mr. Thombre, learned Advocate for Applicant would submit that there is non-compliance of provisions of Section 50 of the NDPS Act. He would submit that such non-compliance of the statutory provisions vitiates the seizure and prosecution case. He would submit that monetary transaction placed on record by the prosecution before the Court are because both accused persons are working as electricians in the same area and are friends with each other since long. He would submit that merely placing on record monetary transactions between co-accused is not sufficient to prove complicity of Accused in the crime at the stage of bail without *prima facie* establishing Applicant's complicity. Hence he would urge the Court to enlarge the Applicant on bail.

BAIL APPLICATION NO. 770 OF 2025:

19. Bail Application No.770 of 2025 is filed by Applicant - Asha Adiram Lingam in connection with C.R. No.116 of 2024 registered with RCF Police Station for offences under Sections 8(c) readwith 22 of the NDPS Act.

20. Briefly stated on 24.04.2024 Applicant was intercepted by the patrolling team in a chance recovery with commercial quantity i.e. 41 bottles of 100 ml each of New Welcyrex Cough Syrup containing alleged contraband Codeine Phosphate & Tripolidine Hydrochloride Syrup. Crime is registered on 24.02.2024 at 02:18 hours which is seen from the C.R. appended at page No.24 of the Application. Seizure panchnama is appended at page No.35 of the Application. From the perusal of the said panchnama it is seen that the seizure panchnama was drawn between 23:35 hours on 23.02.2024 and 04:50 hours on 24.02.2024. Interestingly, if the photograph taken during inventory panchnama appended at page No.45 of the Application is seen, it is seen that the label appended on the envelope / box containing seized contraband at the time of seizure already has the printed C.R. Number affixed thereon even prior to its registration. Shockingly in this case, it is also prima facie observed that the FIR is lodged 2 hours and 32 minutes even before the seizure panchnama is completed when it is ongoing.

21. Apart from the common defence, Mr. Satre, learned Advocate for Applicant would submit that once again in this case there is non-compliance of provisions of Section 50 of the NDPS Act as search of Applicant who is a lady was conducted in the presence of male panchas. He would submit that such non-compliance of the statutory provisions vitiates the prosecution case as also the seizure

effected. Next he would submit that the alleged contraband seized by prosecution was not from her conscious possession but from the dicky of the two-wheeler scooter and hence the recovery cannot be attributed to her as held by the Supreme Court in various judgments. He has drawn my attention to page No.43 of the Application to submit that Certification issued by the Magistrate under Section 52A of the NDPS Act is also not as per the statutory requirement of Section 52A(2) and (3) read with Rules 8 and 18(1) & 2 of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022. Hence he would urge the Court to enlarge the Applicant on bail.

22. Mr. Karmakar, learned APP for State in this matter has strongly resisted the Bail Application. He would submit that Applicant is a habitual offender as she has six antecedents to her discredit which are of similar nature. He would submit that this Court should be cautious while deciding her Bail Application as the possibility of the Applicant re-offending and moreover committing crime of a similar nature is very high. Hence he has urged the Court to reject the Bail Application considering the fact that Applicant is a habitual offender and there are chances of her re-offending.

BAIL APPLICATION NO. 2634 OF 2024:

23. Bail Application No.2634 of 2024 is filed by Applicant - Mohammed Ali Habibullah Shaikh in connection with C.R. No.179 of 2023 registered with RCF Police Station for offences under Sections 8(c), 22(c) and 29 of the NDPS Act. There are two accused in the crime. Applicant before me is Accused No.1.

24. Briefly stated on 27.04.2023 Applicant was intercepted by the patrolling team in a chance recovery with commercial quantity i.e. 62 grams of alleged contraband Mephedrone (MD). Crime is registered on 27.04.2023 at 04:01 hours which is seen from the C.R. appended at page No.54 of the Application. Seizure panchnama is appended at page No.104 of the Application. From the perusal of the said panchnama it is seen that the seizure panchnama is drawn on 26.04.2023 between 18:10 hours and 23:40 hours. Interestingly, if the photograph taken during inventory panchnama appended at page No.118 of the Application is seen, it is seen that the label appended on the envelope / box containing seized contraband at the time of seizure already has the printed C.R. Number affixed thereon even prior to its registration at 04:01 hours.

25. Apart from the common defence, Mr. Khan would submit that there is non-compliance of Section 52A of the NDPS Act in this case and the same is also noted by the Sessions Court while rejecting

the Bail Application of the Applicant herein which is evident from perusal of the said order appended at page No. 8 read at page No.13 of the Application.

26. From perusal of the said order it is seen the Trial Court has observed that there is non-compliance of Section 52A of the NDPS Act in this case. This Court in case of *Chandrabhan Janardhan Yadav Vs. State of Maharashtra*³ has considered the applicability of the provisions of NDPS Act and the Rules and more specifically the reasons as to why the statutory provisions are required to be followed by the prosecution scrupulously in order to avoid vitiation of the prosecution case.

27. Mr. Satre, learned Advocate has persuaded the Court to take on record a reported order of the Supreme Court passed in the case of *Kamaljit Singh @ Pappu Vs. The State of Punjab*⁴ wherein the Supreme Court while dealing with a matter involving a similar issue which is framed as the common issue herein has recorded an observation that it is unfathomable as to how the FIR number could be noted on the search and seizure panchnama when the same were drawn up obviously at an earlier point in time and preceded the registration of the FIR. I have noted the above judgment of the Supreme Court.

28. Learned APPs for Respondent – State have vehemently opposed the Bail Applications. They have argued that in all matters

³ Bail Application No.2254 of 2024 and connected matters decided on 04.03.2025.

⁴ Criminal Appeal No.424 of 2009 decided on 31.01.2019

commercial quantity of contraband is involved and hence rigours of Section 37 of the NDPS Act would be applicable. They have referred to and relied upon the decision of the Supreme Court in the case of *Narcotics Control Bureau Vs. Kashif*⁵ to submit that assuming without admitting there is an error in making compliance as per the provisions of the NDPS Act, even in such cases non-compliance of procedural provisions do not by itself entitle the accused to bail or vitiate the trial. They would submit that procedural violations must be assessed in context to the specific case and should not automatically result in bail or acquittal.

29. Next, learned APPs have placed on record order dated 04.02.2025 passed by this Court (Coram: N.J. Jamadar, J.) in the case of *Shafi Jahir Shaikh Vs. State of Maharashtra*⁶ and would submit that though the Applicant therein took an identical defence as that in the matters at hand, the Court has observed that that the said discrepancy by itself may not solely command decisive significance at bail stage. I have perused the said order. It is seen that in the said case the Court has further observed that the absence of explanation regarding the said discrepancy coupled with *prima facie* non-compliance of provisions of Section 42 of NDPS Act assumes significance while granting bail and hence granted bail to the Applicant therein.

⁵ 2024 INSC 1045

⁶ Bail Application No.5068 of 2024 decided on 04.02.2025

30. Next they have placed on record order of this Court (Coram: N.J. Jamadar, J.) passed in the case of *Zaheer Gayasuddin Shaikh Vs. the State of Maharashtra & Anr.*⁷ wherein this Court has referred to the case of *Kamaljit Singh* (*supra*) and observed that the discrepancy relating to printing of FIR Number on the seizure panchnama / label is a matter of trial and rejected the Application for bail.

31. Next they have placed on record the decision of the Division Bench of this Court in the case of *Ali Hussain Sayyed Vs. State of Maharashtra*⁸ wherein the Division Bench has noted that that discrepancy in the handwriting and labelling on the panchnama is no infirmity in the prosecution case and upheld the conviction of the Appellant therein.

32. Next they have referred to and relied upon the decision of the Supreme Court in the case of *Radhey Sham Vs. State of Haryana*⁹ wherein in paragraph No.6 therein the Supreme Court has opined that mentioning the FIR Number on recovery panchnama does not vitiate the FIR and upheld the conviction of the Appellant therein.

33. However the facts of the case in *Ali Hussain Sayyed* (*supra*) and *Radhey Sham* (*supra*) are different as they are decisions in Appeals before the respective Courts. In view of the above submissions and decisions, learned APPs have urged the Court to reject the Bail

⁷ Bail Application No.2742 of 2023 decided on 14.03.2024

⁸ 1992 SCC OnLine Bom 419

⁹ (2001) 10 SCC 206

Applications.

34. I have heard all the learned Advocates for Applicants and learned APPs for State in the above matters and with their able assistance perused the record of all cases.

35. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. It is brought to the notice of the Court that trials are taking perpetuity to conclude and prisons are also simultaneously overcrowded in some segments.

36. In so far as Applicant in Bail Application No.4954 of 2024 is concerned, it is seen that the signature of the Applicant is absent on the label pasted on the envelope containing the alleged contraband and hence the *prima facie* case of prosecution against Applicant appears to be suspect and doubtful. What is all the more surprising is the fact that the Chemical Analysis Report read at page No.81 of the Application, concludes presence of some other contraband than the one seized by the raiding team during seizure and hence that itself in my opinion is a substantial *prima facie* ground for release on bail coupled with the common defence taken by the Applicant.

37. In so far as Applicant in Bail Application No.5190 of 2024 is concerned, *prima facie* non compliance of Section 50 is seen from the record of the case with the common defence taken by Applicant.

38. In Bail Application No.5386 of 2024, it is seen that once again there is non-compliance of Section 50 coupled with the ground of parity which *prima facie* weighs in favour of Applicant for grant of bail.

39. In so far as Applicant in Bail Application No.5471 of 2024 is concerned it is seen that there is no sufficient material placed on record to establish the link between Applicant and Accused No.2 except the monetary transactions which cannot be considered as decisive proof at this stage unless supported or corroborated by incriminating material to show complicity of Applicant.

40. In Bail Application No.770 of 2025, it is seen that the Applicant is a lady and contraband is seized from the dicky of the two wheeler scooter and not from her conscious possession. It is trite law that contraband seized from the dicky of a car or any vehicle cannot be attributed to be in conscious possession of the accused who was intercepted with the vehicle. Though Mr. Karmakar has raised apprehension about Applicant being a habitual offender and there are high chances of she re-offending after enlargement on bail, it needs to be noted that an under-trial accused cannot be kept behind bars for an indefinite period pending trial when *prima facie* there are laches in the prosecution case itself. Be that as it may, these apprehensions can be taken care of by imposing stringent conditions.

41. Lastly, in the case of Applicant in Bail Application No.2634 of 2024, it is seen that there is partial non-compliance of provisions of Section 52A which *prima facie* vitiates the prosecution case and this Court has already dealt with such an identical issue in the case of ***Chandrabhan Janardhan Yadav*** (*supra*).

42. In the present cases it is seen that at this *prima facie* stage, there is no plausible explanation given by the prosecution to justify the mention of the Crime Register Number on the label of envelope / box of containing the seized contraband pasted at the time of seizure panchnama prior to its registration. The observation of the Supreme Court in the case of ***Kamaljeet Singh*** (*supra*) applies on all fours to the facts of the present cases. Hence benefit of doubt needs to be given to the Applicants at this stage.

43. Filing of an FIR in NDPS cases must occur promptly following the detection of the crime to maintain its integrity and reliability. In the context of NDPS Act, the timing of the FIR in relation to detection of a crime is crucial. FIR serves as the initial document that sets the criminal law in motion, providing the earliest version of events concerning the commission of a cognizable offence. In NDPS cases, FIR must be filed as soon as possible after the detection of the crime. Delays can lead to questions about the authenticity of the Report and may suggest fabrication or embellishment. One cannot

obtain the FIR Number before filing the FIR. FIR Number is assigned by the Police Station after the FIR is registered and recorded. It is an unique number. Police Officer must record the FIR in writing, read it back to the informant to ensure accuracy and have the informant sign it.

44. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“37. Offences to be cognizable and non-bailable.:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

45. Though it is submitted that commercial quantity of alleged contraband are seized from Applicants and hence rigours of Section 37 of the NDPS Act would be applicable, in the facts of the present case wherein this Court is of the *prima facie* opinion that there is glaring discrepancy in seizure procedure conducted by the prosecution coupled with non-compliance of statutory provisions of the NDPS Act in some cases, the said rigours can be said to be *prima facie* satisfied.

46. In view of my above *prima facie* observations coupled with lack of explanation from prosecution regarding the printing of the Crime Registration Number prior to its registration on the label during drawing the seizure panchnama, in my opinion, Applicants have made out a case for grant of bail.

47. Needless to state that complicity of Applicants in the alleged crime can be proved during trial.

48. Hence, all Bail Applications are allowed subject to the following terms and conditions:-

- (i) All Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Applicants are permitted to furnish provisional cash bail of Rs.50,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs.50,000/- each within a period of four weeks after their release which shall be accepted by the Trial Court. Applicants shall provide sureties as directed
- (iii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (v) Applicants shall surrender their passport with the trial Court within one week from their release;
- (vi) Applicants shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Monday of the said

month falls on a holiday and / or non Court working day, Applicants shall mark presence on the next working day;

(vii) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;

(viii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(ix) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(x) In case of any infraction of the above conditions and / or two consecutive defaults in marking attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

49. 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.

50. All Bail Applications are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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