

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 5036 OF 2024

Mohammad Sultan Mohammad Munavar Khan .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Dilip Mishra a/w. Mr. Ayaz Khan, Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 10, 2025.

P.C.:

1. Heard Mr. Mishra, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.774 of 2023 registered with 8(c), 21, 22 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

3. The present case is a classic case of transgression of procedural law in a case under NDPS Act. One of the reasons as to why the procedure under the NDPS Act and the rules prescribed therein are required to be followed is to ensure that there is no transgression and the procedure is followed to the hilt so as to indict a

conviction. *Prima facie* in the present case it is seen that the certificate issued by the Magistrate dated 30.10.2023 under Section 52A of the NDPS Act which is evident from page No.57 of the Application is not in consonance with the provisions of the NDPS Act viz Section 52A(2) and (3) and not in Form No.5 under Rules 8 and 18(1) and 18(2) of Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. There is complete disregard and non-compliance of provisions of Section 42 either. *Prima facie* it is seen that police constable – Gujjar received the intelligence information but he has not reduced the same in writing and the FIR is completely silent on this aspect. Provisions of Section 42(1) of the NDPS Act require the Officer and/or his immediate superior to receive the information in writing to convey the information to the superior.

4. In the present case, it is seen that the information which was received by police constable – Gujjar at 04:00 p.m. and it was conveyed to PSI – Ghadge who has also not reduced the said information in writing. The most shocking part is that the said information is reduced in writing in the information register i.e. the station house diary by Senior Police Inspector – Raju Bidkar at 06:37 p.m. which is after delay of 2 hours 14 minutes. Neither police constable Mr. Gujjar or PSI – Ghadge who received the information has sent a copy of information in compliance of provisions of Section 42 of the NDPS Act. Police Inspector who has sent the said information to

the superior officer is not the person who received the said information i.e. Mr. Gujar and therefore there is a clear digression and non-compliance of the procedure prescribed under Section 42(2) of the NDPS Act. This letter under Section 42(2) is appended at page No.74 of the Application.

5. Next appraisal of the Applicant in the present case under Section 50 of the NDPS Act when *prima facie* seen and appended from page No.77 of the Application shows that Applicant was apprised in Marathi language by an undated letter. Perusal of the arrest form of Applicant *prima facie* shows that Applicant knows only two languages namely Hindi and English which is also evident from the panchnama. The signature of the Applicant is obtained on the appraisal form under Section 50 of the NDPS Act without any endorsement whatsoever. Copy of panchnama in the present case when read appended at page No.32 of the Application shows that Police Inspector – Chavan has carried out enquiry with Applicant regarding obtaining his name, address and other personal details, but name of said Police Inspector – Chavan is absent in the raiding party which has apprehended Applicant. The letter at page No.50 of the Application is unsigned. Record shows that statement of the panchas are not recorded by the prosecution in the present case. Considering that this is a case of recovery under Section 42(1) in a public place, provisions of the NDPS Act and Rules are required to be strictly followed. Applicant is

apprehended with 152 bottles of cough syrup which are manufactured and distributed by Smilax Healthcare Pvt. Ltd..

6. In view of the aforesaid transgression and procedural lapse which is *prima facie* evident and not having been followed the present Applicant is entitled to bail. 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 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 with 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.

7. 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.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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