

Ajay

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

CRIMINAL BAIL APPLICATION NO. 5074 OF 2024

Chand Ali Bashir Ahmad Ansari	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Amol D. Palekar, Advocate for Applicant.
 - Ms. Megha S. Bajoria, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2025.

P.C.:

- 1.** Heard Mr. Palekar, learned Advocate for Applicant and Ms. Bajoria, learned Advocate for Respondent – State. Perused the record.
- 2.** Applicant seeks Bail in connection with C.R. No. 17 of 2020 registered with ANC, Bandra Unit, Mumbai Zonal for offences punishable under Sections 8 (C) read with Section 20(C) of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short “**NDPS Act**”). Applicant is incarcerated since 21.09.2020.
- 3.** Briefly stated, case of prosecution is that on 21.09.2020 while patrolling at about 10:30 a.m. the patrolling team noticed Applicant standing near Shankar Mandir Bus Stop Nos.25, 320, 421 and 426, Water Engineer, B.M.C Office gate, Sakivihar Road, Powai in a suspicious manner. On questioning Applicant stated that he was

waiting for someone. It is prosecution case that Applicant attempted to flee but was apprehended by the patrolling team. On search 21 kilograms of ganja (commercial quantity) was found in a white nylon bag carried by Applicant in his hand.

4. Mr. Palekar, learned Advocate appearing for the Applicant would submit that no authorization was obtained before search being conducted and hence the seizure is vitiated. He would submit that there is non-compliance of provisions of Sections 42 and 50 of the NDPS Act. He would submit that statutory Notice under Section 50 of NDPS Act was not served on him. He would submit that there is non-compliance of Section 52-A (2)(b) of the NDPS Act as photographs of the contraband seized in the present case are not appended to the charge-sheet to establish a proper Inventory panchanama. He would argue that charge-sheet has been filed but there is no possibility of the trial concluding in the near future as it has not commenced and applicant is incarcerated for a period of 4 years 3 months and 25 days. He would also submit that there are no antecedents of the Applicant.

5. In support of his submissions, Mr. Palekar has relied upon the following decisions of the Supreme Court and this Court:-

(i) *Ankur Chaudhary Vs. State of Madhya Pradesh*¹

(ii) *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and*

¹ 2024 SCC OnLine SC 2730

Anr. ²;

(iii) *Jalaluddin Khan Vs. Union of India* ³;

(iv) *Cynthia Bandu Udanshive Vs. State of Maharashtra* ⁴;

(v) *Mohammad Jakir Nawab Ali Vs. State of Maharashtra thr. P.S.O.* ⁵; and

(vi) *Kamlesh Sakhray Gupta Vs. Union of India and Anr.* ⁶

6. Considering the aforesaid facts and circumstances, he would urge the Court to enlarge the Applicant on bail on conditions as deemed fit by the Court.

7. *PER CONTRA*, Ms Bajoria, learned APP appearing for the Respondent – State would at the outset submit that the quantity of ganja recovered is in excess of commercial quantity from him. She would submit that prosecution has relied upon the list of 10 witnesses which is appended at page No.43 of the Bail Application which the prosecution desires to examine. She would submit that as commercial quantity is involved in the present case, hence rigours of Section 37 of the NDPS Act would apply to the Applicant. Hence, she would urge the Court to reject the Bail Application.

8. Application for seeking bail is primarily made on account of non-compliance of Section 42 and 50 of NDPS Act. This is a case of

² 2024 SCC OnLine SC 1693

³ 2024 scc OnLine SC 1945

⁴ Cri. Bail Application No. 823 of 2024 decided on 09.08.2024

⁵ 2024 SCC OnLine Bom 3198

⁶ Cri. Bail Application No. 985 of 2024 decided on 12.12.2024

chance recovery. Hence, Section 43 would apply. If that be the case, then there has to be a proper inventory panchanama, which is inadequate as it clearly does not comply with Section 52A(2)(b) relating to taking / certifying the photographs in the presence of Magistrate.

9. I have perused the record. The provisions applicable in the present case would be Sections 42, 43 read with Sections 50 and 52A of the NDPS Act.

10. In the present case, apprehension of tampering in between has been raised by Applicant specifically in view of the provisions of Section 52 read with Section 52A of the NDPS Act.

11. It is seen that once the Applicant, according to prosecution refuses to be searched before the Magistrate / Gazetted Officer after being informed, it was the duty of the investigating officer after conducting the search to have recorded the grounds for his belief under the proviso to Section 42(1) since the search was between sunrise and sunset and the report ought to have been sent to his immediate official / superior. This is because the seizure has been done from the person i.e. Accused – Applicant and he has been indicted on the ground that he is alleged to be in possession of 21 kgs of contraband in a white nylon bag which is more than commercial quantity.

12. The Applicant is a driver by profession. He has no criminal antecedents. He has been incarcerated for 4 years 3 months and the trial has not begun. His prolonged incarceration militates against his most precious fundamental right guaranteed under Article 21 of the Constitution of India i.e. his personal liberty.

13. The Supreme Court in the case of *Rabi Prakash Vs. The State of Odisha*⁷ wherein in a much more grievous situation, the Accused / under trial was facing prosecution under the NDPS act for being apprehended while peddling and transporting 247 kilograms of Ganja and had suffered incarceration for 3 and half years has while recognising the rights of the under trial held that he deserved to be released on bail recognising his right to a speedy trial as a facet of right to life under Article 21 of the Constitution of India even in the case of the stringent requirement under Section 37 of the NDPS Act.

14. In somewhat identical and similar facts, this Court (Coram Manish Pitale, J.) in the case of *Kamlesh Sakhranj Gupta Vs. Union of India and Anr.* in Bail Application No.985 of 2024 on 12.12.2024 wherein the contraband seized was of 2 kilograms of Charas has in the facts of that case due to prolonged incarceration of 3 and half years, commercial quantity being 1 kg. and discrepancies noted therein, applied the position of law as held by the Supreme Court in the case of *Rabi Prakash (supra)* to the benefit of Applicant therein and released

⁷ 2023 SCC OnLine SC 1109

him on bail on conditions.

15. The charge-sheet also does not indicate as to where the Applicant – Accused intended to deliver the contraband or whether anybody in the said location was present to receive it. Hence the case of prosecution appears to be doubtful. There is complete silence on the above aspect in so far as the investigation is concerned. Charge-sheet is already filed without any such investigation being made.

16. It is *prima facie* seen that there is non-compliance of Section 52-A(2)(b) of NDPS as photographs of the seized contraband are not appended to the chargesheet as it is mandatory to establish a proper Inventory panchanama.

17. The aforementioned details in the charge-sheet coupled with the absence of corroborative evidence of independent witnesses, *prima facie*, clearly undermines the credibility of the prosecution case. In such a case of chance recovery, absence of independent witnesses and alleged circumvention of procedural safeguards as can be seen from the record lead to significant short comings in the prosecution case.

18. Attention is invited to the decision of the Single Bench of the Delhi High Court in the case of *Tinku Vs. State (NCT of Delhi)*⁸. In that case, Applicant was arrested and 945 grams of heroin (commercial quantity being 250 gms.) was seized from his bag. Applicant therein

⁸ 2024 SCC OnLine Del 9132, decided on 24.12.2024

was incarcerated for 2 years and 5 months. There were certain discrepancies found in the prosecution case *prima facie* from the record and panchnama which was discussed by the Court. Court relied upon several decisions of the Supreme Court and the High Courts in support of the fact that there would be a possible delay in trial and therefore the supervening right of Article 21 of the Constitution of India would have to be considered. Observing that conclusion of the trial is nowhere in sight, the Court relied on several decisions which are referred to in paragraph Nos.50 and 51 of the said decision.

19. Thus in the present case neither there is *prima facie* corroborative evidence in the form of independent witnesses nor any CDR connectivity related to the Applicant place before me or in the charge-sheet nor any financial trail having been unearthed during investigation involving the Applicant, and hence the case of the Applicant deserves to be considered for grant of bail.

20. It is however clarified that this is a *prima facie* assessment only since evidence will be weighed during the trial. It would therefore not be prudent to keep the Applicant behind bars for an indefinite period. This Court finds it to be a fit case for grant of bail to the Applicant in the peculiar facts of this case.

21. Hence, the following order:-

ORDER

- (i) Applicant – Chand Ali Bashir Ahmad Ansari, who is facing trial in NDPS Special Case No.17 of 2020 pending on the file of Special Judge under NDPS Act, City Civil and Sessions Court, Greater Bombay, is ordered to be released on cash bail of Rs.25,000/- (Rs. Twenty Five Thousand only) and he shall furnish P.B. and S.B. with one or two sureties of the like amount within a period of four (4) weeks from today;
- (ii) Applicant shall report to the Investigating Officer at ANC, Bandra Unit, Mumbai Zone, once every week upto 4 weeks after release at 10:00 a.m. on the first Monday and thereafter on the first Monday of every month between 10:00 a.m. to 12:00 p.m.;
- (iii) 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 revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable; and
- (vii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

22. The aforesaid observations are *prima facie* on the basis of record of the case and is an expression of opinion by this Court only for the purpose of grant of bail to Applicant and shall not influence the trial in the present case.

23. In the above terms, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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TRAMBAK
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AJAY TRAMBAK
UGALMUGALE
Date: 2025.01.15
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