

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5261 OF 2024

Saud Rauf @ Alias Kismat Ali Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO.405 OF 2025

Rabiabi Altaf Ali Jaffery .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Ms. Ashwini Achari, Advocate i/by Tasleem Shaikh for Applicant in Bail Application No.5261 of 2024.
 - Mr. Hitendra J. Dedhia, APP for Respondent in Bail Application No.5261 of 2024.
 - Ms. Lochan P. Chandka, Advocate for Applicant in Bail Application No.405 of 2025.
 - Mr. Dinesh J. Haldankar, APP for Respondent in Bail Application No.405 of 2025.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025

P.C.:

1. Heard Ms. Achari, learned Advocate for Applicant in Bail Application No.5261 of 2024; Mr. Dedhia, learned APP for Respondent in Bail Application No.5261 of 2024; Ms. Chandka, learned Advocate for Applicant in Bail Application No.405 of 2025 and Mr. Haldankar, learned APP for Respondent in Bail Application No.405 of 2025.

2. These are Applications under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in

connection with C.R. No.1150 of 2024 registered with Mumbra Police Station for offences punishable Section 8(c) read with Sections 20(b), 20(b)(ii), 22(c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. Common order is passed in both Applications. Applicant in Bail Application No.5261 of 2024 is arraigned as Accused No.2 and Applicant in Bail Application No.405 of 2025 is arraigned as Accused No.3 in the present crime. On receiving a specific information, copy of which is appended at page No.181 of the Bail Application No.5261 of 2024, Accused Nos.1 to 4 were apprehended and arrested alongwith alleged contraband. In so far Accused No.2 – Applicant before me is concerned, he was found in possession of 18 bottles of codeine phosphate being commercial quantity. In so far Accused No.3 – Applicant before me is concerned, he was found in possession of 3 kilograms 200 grams of ganja which is admittedly intermediate quantity. Rigors of Section 37 would therefore apply to the case of Accused No.2 *prima facie* considering recovery of alleged contraband.

4. Ms. Achari would persuade me to consider the fact that information and intimation which was received through Intelligence Input was infact received by Police Havaldar – Abhijit Adinath More from his secret informer. She would submit that receipt of said intelligence input has not been entered into the station house diary

neither the entry which has been shown to made gives any time of receipt of said intelligence input. She would submit that time of receipt of said intelligence input is crucial and critical since provisions of Sub Section 2 of Section 42 of the NDPS Act contemplates intimation of said information to the Superior Officer within a period of 72 hours from date and time of receipt of said information.

5. That apart, she would submit that the letter at page No.181 of the Application if *prima facie* seen is the intimation letter which has been addressed by Senior Police Inspector – Sanjay Ramchandra Shinde. Perusal of the same *prima facie* reveals that said letter of intimation is in the nature of information and not in the nature of intelligence input having been received. However, in view of the fact that intelligence input is given by the person who has not received the intelligence information, the same is in transgression of Section 42 (2) of the NDPS Act.

6. In that view of the matter, the case of present Applicant is covered by the decision of this Court in the case of ***Hareshwar Dnyaneshwar Patil Vs. The State of Maharashtra***¹.

7. In view of the aforesaid dichotomy noticed in the transgression of the procedural law which is required to be duly followed, rather scrupulously followed as held in the case of ***Sarija***

¹ Bail Application No.1222 of 2024 decided on 03.04.2025.

*Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*², the Applicants have made out a case for grant of bail. In so far as Accused No.3 is concerned, considering the rigors of Section 37 of the NDPS Act would not apply, the said Applicant has also made out a case for grant of bail.

8. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their addresses where they proposes to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next

² (2004) 12 SCC 266.

working day;

- (v) 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;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants 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.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application No.5261 of 2024 and Bail Application No.405 of 2025 are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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