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

CRIMINAL BAIL APPLICATION NO. 5332 OF 2024

Augustin Sunderraj Nadar

.. Applicant

Versus

Union Of India and Anr.

.. Respondents

WITH

CRIMINAL BAIL APPLICATION NO. 1596 OF 2024

Frank Chibuzor Nandi

.. Applicant

Versus

Intelligence Officer and Anr.

.. Respondents

.....

- Mr. Ayaz Khan a/w Mr. Dilip Mishra, Ms. Zehra Charania & Ms. Mallika Sharma for Applicant in BA No. 1596/24.
- Ms. Munira Palanpurwala a/w Mr. Kainat Sayed, Ms. Sunaiya Khan & Ms. Deepa Amati for Applicant in BA No. 5332/24.
- Ms. Ruju R. Thakker, Special PP for Respondent No. 1 in BA No. 1596/24.
- Ms. Rajeshree V. Newton, APP for State in BA No. 1596/24.
- Ms. Megha S. Bajoria, Special PP for Respondent No. 1 in BA 5332/24.
- Mr. Balraj B. Kulkarni, APP for State in BA 5332/24.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant in BA 1596/24; Ms. Palanpurwala, learned Advocate for Applicant in BA 5332/24; Ms. Thakker, learned Special PP for Respondent No. 1 in BA 1596/24; Ms. Newton, learned APP for State in BA 1596/24; Ms. Bajoria, learned Special PP for Respondent No. 1 in BA 5332/24 and

Mr. Kulkarni, learned APP for State in BA 5332/24.

2. Applicants - Accused have filed the present Applications for regular bail in connection with N.D.P.S. Spl. Case No.1121 of 2023 arising out of Crime No.15 of 2023 registered with Narcotics Control Bureau for offences punishable under Sections 8(c) r/w 21(c), 23(c), 27A, 28, 29, 30, 35 and 54 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short, "**NDPS**" Act).

3. On 25.03.2025, the present Bail Applications were fully heard except for the learned Special Public Prosecutor on behalf of the Union of India in Bail Application No.5332/2024 who entered appearance for the first time on that date and requested the Court to allow her to file Affidavit-in-Reply and make submissions, pursuant to which the following order was passed:-

"1. Heard.

2. This is a group of two Bail Applications. In Bail Application No. 1596/24, Applicant - Frank Chibuzor Nandi is a foreign national whereas in Bail Application No. 5332/24, Applicant - Augustin Sunderraj Nadar is an Indian national. Augustin is arraigned as accused No. 1 and Frank is arraigned as accused No. 2 in the crime in question. Both the Applicants are indicted in an NDPS offence. Accused No. 1 was intercepted on 30.01.2023 at the airport while travelling from Ethiopian Airlines to Mumbai. From his person and conscious possession, nothing was recovered but since there was intelligence information on the basis of which he was intercepted, his trolley bag was seized and searched which led to recovery of two packets of contraband. In the first packet, there were 12 small box packets of "Odour Control soap, Bio-Oil" which were recovered and they were marked as "W-1 to W-12" whereas in the second packet, 4 similarly placed white coloured small box packets having printed female face and legs photo and other details in foreign language printed in green colour were recovered having the contraband. Case of the prosecution is

that accused No. 1 smuggled the alleged contraband i.e. Cocaine in the said soap packets embedded inside the soaps. From the seizure panchnama, it is prima facie seen that prosecution undertook the exercise of ascertaining the veracity of the alleged contraband and after scrapping the wax from each of the soaps removed and tested the alleged contraband found inside each of the soap packets in the affirmative and thereafter it is stated in the seizure panchnama that officers of the prosecution broke the said 12 soaps into a powder, mixed them and thereafter sealed the same in accordance with law. Similar exercise was undertaken by the prosecution with respect to the 4 other soaps found in the second packet also.

3. The first point of contention raised by Mr. Khan, learned Advocate for Applicant in BA 1596/24 is prima facie violation of the provisions of Rule 3 of the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. He would submit that if the said Rules are seen, then prosecution and its action of breaking the soaps after ascertaining the contraband from each of the soap box and mixing them prima facie contravenes the said statutory provisions and therefore it vitiates the seizure of the alleged contraband as also vitiates the trial. He would next submit that at the time of drawing the samples at inventory stage, there is no certification of the sample which has been seized by the prosecution pursuant to its seizure in the present case. He would submit that Rules 8 and 18(1) read with the provisions of Section 52-A(2) and (3) are prima facie violated in the present case and there is no certification of the samples which can be seen from the certificate of Magistrate appended at page No. 215 of the Application. Neither the said certificate is issued in Form 5 on the statutory Application filed as required by the Rules. He would submit that this transgression is covered by the decision of this Court in the case of **Chandrabhan Janardhan Yadav v. State of Maharashtra**¹.

3.1 Next Mr. Khan would persuade me to consider the role of the Applicant. He would submit that according to the prosecution case and as stated in the seizure panchnama in order to apprehend Applicant - accused No. 2, the statement of accused No. 1 was recorded under Section 67 of the NDPS Act and it is stated therein that it was accused No. 2 who had facilitated the travel of accused No. 1, paid for his tickets and that accused No. 2 would be meeting the Applicant outside the airport. He has specifically pointed to the narration and noting in the seizure panchnama with respect to a video call having been given by making a video call by accused No. 1 to accused No. 2 who was waiting outside the airport to receive him but in the chargesheet and all further statutory documentation, prosecution has not placed on record any material to support the said theory of the video call having been given made. He would submit that this is crucial and critical at this stage

¹ Order dated 04.03.2025 passed in BA No. 2254/2024 & Connected Bail Applications

because it is the prosecution case that present Applicant - accused No. 2 was apprehended immediately alongwith accused No. 1 as soon as he stepped outside and met the Applicant. However he would submit that contrary to this the Applicant is arrested on 02.02.2023 and not as claimed by the prosecution and as stated in the seizure panchnama outside the airport on 30.01.2023 itself. Finally he would submit that statement of accused No. 1 is a statement recorded under Section 67 inquiry conducted by the prosecution and NDPS officers and the same is prima facie hit by the provisions of Sections 25, 26 and 27 of the Indian Evidence Act and as such in that view of the matter, in view of the decision of the Supreme Court in the case of **Tofan Singh v. State of Tamil Nadu**² veracity of the said statement at bail stage needs to be considered for grant of bail. In this case it is held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

3.2 In the case of **Phundreimayum Yas Khan Vs. State (NCT of Delhi)**³ the Delhi High Court has observed that disclosure statement of co-accused is per se not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

3.3 In the case of **Jasbir Singh Vs. Narcotics Control Bureau**⁴ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act vis-a-vis Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

2 (2021) 4 SCC 1

3 2023 SCC OnLine 135

4 (2023) SCC OnLine Del 134

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

64. ***

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon"ble Court in State v. Navjot Sandhu @ Afsan Guru Crl. A. No. 80/2003 wherein this Hon"ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon"ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

- 1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.*
- 2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.*
- 3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.*
- 4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.*
- 5. Only such portion of the information as is distinctly connected with the said discovery is admissible.*
- 6. The discovery of the fact must relate to the commission of some offence.”*

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a “new fact” thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence.”

3.4 He would fairly submit that the prosecution can prove its case at the trial with respect to the complicity of Applicant. He

would submit that there is one antecedent of the Applicant in which he has been acquitted by the Sessions Court by order dated 28.06.2019. Said order is placed on record. He would submit that Applicant - accused No. 2 is a foreign national who is married to an Indian citizen (his wife) and has a child and is staying in India. Further Supreme Court in the case of **Sarija Banu Alias Janarthani Alais Janani and Anr. v. State through Inspector of Police**⁵ has held compliance of Section 42 is mandatory and it is a relevant fact required to be considered while considering a Bail Application. He would therefore persuade the Court to grant bail to the Applicant.

4. Ms. Palanpurwala, learned Advocate for Applicant in BA 5332/24 for Applicant - accused No. 1 would adopt the submissions and arguments made by Mr. Khan which for the sake of brevity are not reproduced herein. She would submit that considering the transgression of the statutory provisions as envisaged under the NDPS Act and NDPS Rules which have been prima facie argued and explained by Mr. Khan, the procedure adopted by the prosecution stands vitiated and is a suspect and Applicant should be given the benefit of doubt.

5. Prima facie it is seen that both the Applicants have been incarcerated from February 2023 onwards for a period of almost more than 2 years & 1 month pending trial. Investigation is completed and Chargesheet has been filed.

6. Ms. Thakkar, learned Special PP for Respondent No. 1 in BA 1596/24 would draw my attention to the detailed affidavit in reply dated 30.07.2024 filed by Mr. K. Ashok Chakravarthy, Deputy Director of Revenue Intelligence, Mumbai Zonal Unit. At the outset, she would persuade me to consider that this is an offence under NDPS Act wherein accused No. 1 has been apprehended and arrested with commercial quantity of the alleged contraband which is Cocaine which has a high value in the international market and modus operandi used by the Applicant is to repeatedly arrange travel of persons to East African Countries and make them return back with the smuggled contraband. She would submit that present Applicant is a facilitator of the crime in question as he is running a travel agency and according to the prosecution repeatedly sending vulnerable people like accused No. 1 abroad in lure of giving them some extra money and through them smuggling the alleged contraband in question. Though she would submit that the statement of accused No.1 in the present case prima facie indicts and spells out the role of accused No. 2, therefore this Court should be cautious in granting bail as there is every chance that accused No. 2 will reoffered himself if he is released on bail considering the work that he is doing. She would submit that objections taken by prosecution in its affidavit in reply are with respect to application of the rigors of Section 37 to the present case in view of recovery of commercial quantity of the

5 (2004) 12 SCC 266

alleged contraband which something that the Court should not loose sight off unless and until the Court comes to the reasonable prima facie conclusion that Applicant has not committed the crime and until such prima facie opinion is returned by the Court, Applicant cannot be entitled to be enlarged on bail. Hence, she prays for rejection of the Bail Application.

7. I have considered the submissions made by Mr. Khan, Ms. Panlanpurwala and Ms. Thakker.

8. At this juncture, Ms. Thakker informs the Court that Ms. Bajoria, Special PP has been directed to appear on behalf of the prosecution in BA No.5332/24. Ms. Bajoria is present in Court. She would persuade the Court to allow her to file affidavit in reply and also request her to grant sometime to get the affidavit vetted and approved by the Commissioner / Competent Authority to enable the prosecution to file the same.

9. Considering that Union of India was served on 04.03.2025, acknowledgment of which is placed before the Court by Ms. Palanpurwala, it was the duty of the Union of India to ensure that affidavit in reply was filed because in the case of the co-accused namely accused No. 2, the affidavit in reply has already been filed rather a detailed affidavit in reply has been filed. On perusal of the same, prima facie, I find that prosecution has covered the role of both the accused persons. Be that as it may, in view of the request made by Ms. Bajoria, learned Special PP, I am inclined to give her time to prepare the affidavit in reply, however only request is that the same shall be filed at the earliest considering the hearing of the present Bail Applications having been done by the Court and the matter is part-heard. If the said affidavit in reply is filed by Mr. Bajoria, further order will be passed in both the Applications on the next date. Concerned Competent Authority who shall approve the affidavit is directed by the Court to ensure that the approval is given at the earliest so that same can be filed in the Court and served on the opposite side before the next date positively.

*10. Stand over to **2nd April, 2025 at 2:30 p.m.** To be placed under the caption "**Part-Heard**".*

4. The aforesaid matter was part heard on the previous date.

The Union of India filed Affidavit-in-Reply dated 01.04.2025 in Bail Application No.5332 of 2024 on behalf of Respondent No.1 through the Deputy Director, Directorate of Revenue Intelligence, Mumbai Zonal Unit which is appended at page No.939 of the

Application. Learned SPP after going through the Affidavit-in-Reply would submit that Applicant in Bail Application No.5332 of 2024 is an educated person who has knowingly traveled to East Africa and aided the Accused No.2 in the present crime to traffic the alleged contraband. She would submit that wife of Accused No.2 was instrumental in arranging the travel itinerary of the Applicant to Ethiopia and back to Mumbai. She would submit that there is *prima facie* material available on record in the form of CDRs which establish that Applicant was in constant touch with Accused No. 2 who is a foreign national settled in India for the purpose of trafficking of alleged contraband. She would submit that there is no discrepancy committed by prosecution during seizure of the contraband as alleged by Applicant. She would submit that once it was confirmed on testing that each of the 12 packets contained the same substance there is no ambiguity in mixing the contents of all 12 packets for the purpose of seizure and storage of the contraband. She would submit that entire seizure and sampling of alleged contraband is duly recorded, thus establishing its authenticity and if there is any alleged non-compliance of mandatory provisions then the same can be determined at the time of trial. In support of this submission she would rely on the decision of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Kashi⁶*** and draw my attention to the said judgment and the findings rendered

⁶ Cri. Appeal No.5544 of 2024 decided on 20.12.2024

therein stating that any lapse or delay under Section 52A is a procedural irregularity and does not render the evidence inadmissible. She would submit that Supreme Court has held that Section 52A of the NDPS Act which prescribes the procedure for disposal of seized narcotics does not invalidate the evidence nor does it automatically warrant bail for the accused. She would submit that it is held by Supreme Court that if substantial compliance of the procedure laid down under Section 52A is followed then any non-compliance thereof maybe fatal only in cases where such non-compliance goes to the root of the matter and not otherwise. In the present case she would submit that non-compliance of Section 52A neither vitiates the trial affecting conviction nor can it be a sole ground to seek bail. Hence she would submit that Applicant being apprehended with the alleged contraband *prima facie* proves his culpability and therefore is dis-entitled to bail and his Bail Application be rejected.

5. I have heard the submissions advanced by the learned Advocates at the Bar and perused the record of the case. At the outset what is crucial to be noted is that in the present case the prosecution has not complied with the statutory provisions envisaged under Chapter II pertaining to seizure and storage of seized material (contraband) of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 which have been enacted by the Central Government with

effect from 23.12.2022 in exercise of the powers conferred by Section 76 read with Section 52A of the NDPS Act. These Rules if not adhered to for the purpose of dealing with the seized contraband in my opinion would go to the root of the matter and in that view it would amount to clear transgression of the statutory provisions.

6. The learned Prosecutors appearing for the Union of India have vehemently argued that mixing of contraband recovered in separate packages is permissible if the contents of each packet is the same. I am afraid to say that the Statutory Rules referred to herein above do not give such liberty to the prosecution to mix the contents of different packets/packages containing the alleged contraband. Sub-Rule 1 and 2 of Rule 3 in this regard is very specific. Under Sub-Rule 1 it is stated that narcotics drugs, psychotropic substances and controlled substances seized under the act shall be classified based on physical properties and results of the drug detection kit, if any, and shall be weighed separately. *Prima facie* this has been done in the present case. However Sub-Rule 2 further qualifies that if the contraband is found in packages or containers then such packages and containers shall be weighed separately and serially numbered for the purpose of identification. Thereafter Sub-Rule 3 provides that the seized concealing materiel such as trolley bags, back packs and other seized articles (in this case the wax used to conceal the contraband in the

soap bars) shall be sealed separately.

7. The next applicable provision is Sub-Rule 1 of Rule 10 which states that one sample in duplicate shall be drawn from each packet and container that is seized. Sub-Rule 2 and Sub-Rule 3 therein lay down the sampling procedure for drawing samples to be taken from each package or container if the contents of each package are identical and the representative sample taken should be in equal quantity from each package and then mixed together to make a composite whole from which the final samples are to be drawn for that lot. It is *prima facie* seen that any mixing of the seized contraband at the outset without following this prescribed procedure is impermissible. Mixing is permissible only at the stage of inventory procedure under Chapter III of the said Rules after obtaining Magistrate's permission and not prior thereto. This is because the inventory procedure is to be undertaken for drawing of samples in the presence of the Magistrate. In the present case it is an admitted position that immediately after the seizure was done at the airport and seizure panchanama was completed of the alleged contraband the contents of all 12 packets were mixed together by the prosecution team which *prima faice is* impermissible under the said Rules. When the alleged contraband is recovered from different packets, pouches or container it is imperative on the prosecution to draw a sample each from the recovered

contraband packets, pouches or container. Mixing of contraband is impermissible. In my opinion this is not a procedural irregularity by the prosecution but it goes to the root of the matter and vitiates the prosecution case.

8. In this regard, reference is made to the following decisions of the Supreme Court and this Court:-

*(i) Union of India Vs. Bal Mukund and Ors.*⁷

*(ii) Shabbir Usman Shaikh Vs. The Union of India and Anr*⁸

*(iii) Sameer Rais Shaikh Vs. The State of Maharashtra*⁹

*(iv) Mukesh Kumar Saha Vs. The State of Maharashtra*¹⁰

*(v) Zaheer Gayasuddin Shaikh Vs. The State of Maharashtra and Anr*¹¹

9. Attention is invited to findings returned by this Court in paragraph No. 7(a) of the decision in the case of *Shabbir Usman Shaikh* (8th *supra*) which reads thus:-

“7.

(a) In the present case, the panchanama itself divulges that while 12 packets were allegedly recovered, containing contraband charas, the contents of the entire 12 packets were mixed and placed in one polythene bag. It was recorded that the total weight was 12kg. Commercial quantity being 1 kg, the applicant was proceeded against. This Court in a number of judgments has held that such mixing of contraband is impermissible and that it does raise a serious suspicion about the case against the accused persons. A number of judgments were relied upon, but suffice it to say that in the cases of Sahil Jalauddin Ahmad v/s. The State of Maharashtra (order dated 26

7 (2009) 12 SCC 161

8 BA No.731 of 2024 – Decided on 03.11.2023

9 BA No.2108 of 2023 - Decided on 03.11.2023

10 BA No.693 of 2023 – Decided on 30.11.2023

11 BA No.2742 of 2023 – Decided on 14.03.2024

th July 2023 passed in Bail Application No. 3740 of 2022) and Venktesh Shiva Permal v/s. The State of Maharashtra (judgment and order dated 23 rd January 2024 passed in Bail Application No. 3784 of 2023), in identical circumstances, wherein the contents of separate packets containing contraband, were mixed, it was held by this Court to be a sufficient ground to raise suspicion about the veracity of the case of the prosecution.

10. The Constitution Bench of Supreme Court in the case of *State of Punjab Vs. Baldev Singh*¹² in paragraph No. 28 on legitimacy of judicial process coming under the cloud if acts of lawlessness by the investigating agency are condoned during search operations held that if so done it may undermine the respect for law and may have the effect of unconsciously compromising the administration of justice which cannot be permitted. The Supreme Court concluded the above finding in the context of the NDPS Act and particularly the factor of widespread illiteracy among persons subject to investigation for drug offences. It categorically held that it must be borne in mind that severer the punishment, greater has to be care taken to see that all the safeguards provided in statute are scrupulously followed. There is no reason as to why the empowered Officer / Investigating Officer should shirk or derelict from affording a real opportunity to the suspect and comply with the procedural safeguards contained in Section 50 of the NDPS Act to serve a dual purpose – to protect a person against false accusation and frivolous charges as also compliance of Sections 41, 42 and 43 of the NDPS Act.

¹² (1999) 3 SCC 977

11. The Supreme Court held that in every case the end result is important but the means to achieve it must remain above board. It held that remedy cannot be worse than the disease itself. The NDPS Act provides for a stringent punishment where a statute confers such drastic powers and seeks to deprive a citizen of its liberty for not less than ten years as also makes stringent provisions for grant of bail, scrupulous compliance of the statutory provisions therefore must be insisted upon. Hence where the Act and Rules lay down procedure for taking samples the prosecution Officer cannot disregard the same and act own his own whims and fancies.

12. Hence the submission made by Ms. Bajoria that mixing of the seized contraband at the time of seizure is however impermissible in law as delineated from the Rules. Mixing of contraband at any stage post seizure can be strictly done in accordance with the NDPS Rules, 2022 at the time of sampling with permission of the Magistrate only. The learned SPP has argues that mixing is permissible if contraband retrieved from different packets / container is tested to be the same contraband. The investigating Officer is not empowered to mix the seized contraband at the outset as the Rules do not provide for the same. Rather Rule 3 of the (Seizure, Storage, Sampling and Disposal) Rules, 2022 which applies is categorically envisages a procedure for seizure of contraband from various packets / containers when seized

as also drawing of samples from each of the seized packet in accordance with law. The same procedure is adopted under Rule 10 Of the (Seizure, Storage, Sampling and Disposal) Rules, 2022 if the investigating Officer does not follow the Rules it is a sufficient ground to arouse suspicion about the veracity of the prosecution case.

13. In the case of *Amani Fidel Chris vs. Narcotics Control Bureau*¹³ the learned Single Judge of Delhi High Court has held that mixing of the contents of different package / packets / container (in one lot) and then drawing the representative samples is impermissible since in that case such a sample would cease to be a representative sample of the corresponding package / packets / container. This decision of *Amani Fidel Chris* (13th *supra*) was challenged by the NCB in the Supreme Court and the Special Leave Petition was dismissed by the Supreme Court. The same principle is also adverted to by this Court in the case of *Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra*¹⁴ and *Hari Mahadu Valse Vs. The State of Maharashtra*¹⁵ and by Telangana High Court in the case of *Baba Sow Chandekar and Anr. Vs. The State of Telangana*¹⁶

14. *Prima facie*, there is clear violation of the mandatory provisions of Section 42 of the NDPS Act read with Rule 3 of the NDPS Rules, 2022, which casts a doubt on the seizure and prosecution case.

13 2020 SCC Online Del 2080

14 Bail Application No.1296 of 2022

15 Bail Application No.2299 of 2019

16 Criminal Petition No.4428 of 2022

Supreme Court in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*¹⁷ has held that while considering violation of Section 42 and relevance thereof compliance of Section 42 is mandatory and it is relevant fact required to be considered while considering a Bail Application. In view of my above *prima facie* observations coupled with the *prima facie* observations detailed in the order dated 25.03.2025 and considering their long incarceration in prison over 2 years 3 months pending trial, both the Applicants have made out a case for grant of bail.

15. Hence, both Bail Applications are 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.50,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their addresses where they propose 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;

¹⁷ (2004) 12 SCC 266

- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 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 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 any of the witnesses or tamper with the evidence in any manner;
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.
- (x) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3

of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*¹⁸

16. 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.

17. Both Bail Application No.5332 of 2024 and Bail Application No.1596 of 2024 are allowed and disposed.

[MILIND N. JADHAV, J.]

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¹⁸ Criminal Appeal No. 2814-2815 of 2024 decided on 06.01.2025