

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

BAIL APPLICATION NO. 167 OF 2025

Daniel Naimake @ Daniel Naymek ...Applicant

Versus

State of Maharashtra ...Respondent

Ms. Ashwinii Acharii, *with Anish Pereira i/b Taraq Sayed, for the Applicant.*

Mr. Yogesh Y. Dabke, *APP for the Respondent-State.*

CORAM: DR. NEELA GOKHALE, J.
RESERVED ON: 16TH DECEMBER 2025
PRONOUNCED ON: 17th DECEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with FIR No. 0035 of 2024 dated 6th January 2024 registered with the Sakinaka Police Station, Brihanmumbai City for the offences punishable under Sections 8(c) and 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 14 of the Foreigners Act, 1946.

2. The facts of the case, in brief, are that:-

2.1 On 6th January 2024, while the officials of the Sakinaka Police Station were on patrolling duty, they found the Applicant lurking suspiciously near the area of Hansa Industries, Sakivihar Road, Kurla at around 2.45 a.m. After following due process under the NDPS Act, the Applicant was apprehended as he tried to run away when the Police tried to stop him. He was given notice under Section 50 of the NDPS Act and thereafter, he was searched. On his personal search, the Applicant was found to be in possession of 88 capsules containing a total quantity of 880 grams of Cocaine. The *panchanama* was recorded; contraband was seized and sealed; other compliances were followed and the FIR was registered pursuant to which the Applicant was arrested on 6th January 2024.

3. The Applicant made an application seeking bail before the N.D.P.S. Special Judge, City Civil & Sessions Court, Greater Bombay. However, by order dated 21st October 2024, his bail

application was rejected. Hence, the Applicant is before this Court for the reliefs as prayed.

4. Ms. Ashwinii Acharii, learned counsel appearing for the Applicant, submits that the 88 capsules were opened, mixed and kept in a polythene bag. The entire substance was mixed, which is in contravention of the called the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 and various orders passed by this Court as well as the Supreme Court. Most importantly, she submits that *panchanama* regarding the seizure of contraband is dated 6th January 2024. Thereafter as per the procedure, samples were drawn before the Magistrate pursuant to an application made to the Magistrate for the said purpose. Accordingly, samples were taken before the Magistrate on 25th January 2024 and Inventory *Panchanama* was recorded; samples were sealed with the Magistrate's seal; they were brought back and placed in the store room of the Police Station for safe custody. Ms. Ashwinii Acharii submits that despite the samples being

drawn before the Magistrate and sealed on 24th January 2024, they were sent to the Forensic Science Laboratory ('FSL') for analysis only on 2nd May 2024. Hence, the custody of the samples of the contraband was retained by the Investigating Officer in the custody of the Police Station for a period of four months and few days. She has placed reliance on a recent judgment of the Supreme Court in the matter of ***Rambabu v. State of Rajasthan & Anr.***¹ wherein the Supreme Court dealt with the matter involving similar objection and granted bail to the Petitioner on grounds of long incarceration. Hence, she submits that the Applicant be released on bail.

5. Mr. Yogesh Dabke, learned APP representing the State in the matter, on the other hand, in reply to the objection raised by Ms. Acharii, in respect of the custody of the contraband being retained by the Investigating Officer for a period of four months before sending it to the FSL, on instructions, submits that the concerned Investigating Officer was busy in another investigation and was out of town. Hence, the said samples

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were retained with the Police Station. There is no other explanation offered for the said serious lapse in compliance with the procedure as mandated by law as well as by the Supreme Court. Mr. Dabke, learned APP, also relies on the decision of the Supreme Court in the case of ***Bharat Aambale v. the State of Chhattisgarh***² to buttress his submission that mere non-compliance of the procedure under Section 52-A of the NDPS Act or the Standing Orders/Rules will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful. Mr. Dabke also submits that there are no other contraventions of the provisions of the NDPS Act. He thus, resists the Bail Application.

6. Heard learned counsel appearing for the respective parties and perused the record with their assistance.

7. Admittedly, 88 capsules containing 880 grams of Cocaine were recovered from the Applicant. I have gone

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through the Seizure *Panchanama*, the Inventory *Panchanama* and the FSL Report indicating the date on which the samples drawn before the Magistrate and kept under the seal of the Magistrate, were forwarded to the FSL for analysis. Undoubtedly, Ms. Acharii's submission has some substance since a period of four months has elapsed after the samples were taken before the Magistrate and sent to the forensics after four months. However, a close scrutiny of the Inventory *Panchanama* reveals that the samples drawn before the Magistrate bears the seal of the Magistrate and were kept in the custody of the Police before forwarding them to the FSL. The FSL Report clearly records that the seal of the Magistrate on the samples is intact. Hence, there is no justifiable reason to believe that the samples were tampered before being sent to the FSL. Although, the Investigating Officer ought to have sent the samples for analysis to the FSL within a reasonable period and his inaction in doing so is deprecated, that by itself, does not take away the fact that the samples received by the FSL had unbroken and untampered seal of the Magistrate.

8. The fact remains that 880 grams of Cocaine in 88 capsules were seized from the Applicant. The Applicant is in custody for the past two years. The maximum sentence for the said offence is in between 10 and 20 years. Hence, in the facts of the present case, it cannot be said that the Applicant has suffered long incarceration.

9. I have gone through the decision of the Supreme Court in the case of ***Bharat Aambale (Supra)***. Paragraph 50 (V), (VI), (VII) read thus;

“50.(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution’s case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused

persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.”

In view of the aforesaid position of law contained in the said decision, the lapse on the part of the Investigating Officer in retaining the sample in custody for 4 months, shall not deter the Court in concluding conscious possession of the contraband with the Applicant, since the FSL report records that the laboratory received the sample with the Magistrate's seal intact.

10. Another significant aspect in the present matter is that the Applicant is a foreigner. Admittedly, his passport is expired and he does not have a valid visa. Hence, he is also charged with the offence under the Foreigners Act. The apprehension

expressed by Mr. Dabke that it will be difficult to secure the presence of the Applicant to face the trial, is justiciable.

11. In *Union of India v. Vigin K. Varghese*³ the Supreme Court has held that offence involving commercial quantity of narcotics stand on a distinct statutory footing. Section 37 of the NDPS Act enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements in addition to the ordinary tests under the Cr.P.C. A finding contemplated under Section 37 of the NDPS Act is not a causal observation.

12. In these circumstances, I am not inclined to enlarge the Applicant on bail. The Bail Application is rejected.

13. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(DR. NEELA GOKHALE, J)