

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 502 OF 2025

Hussain Abbas Sadadu Mirza

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Ms. Zehra Charania a/w Mr. Ayaz Khan, Mr. Dilip Mishra & Ms. Mallika Sharma for Applicant
- Ms. Mahalakshmi Ganapathy, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 1, 2025

P. C.:

1. Heard Ms. Charania, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail in connection with C.R.No. 51/2024 registered with A.P.M.C. Police Station, Thane for the offences punishable under Sections 8(c), 22(c) & 29 of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short "**NDPS Act**").

3. Ms. Charania would submit that Applicant is arraigned as Accused No. 2 in the crime. She would submit that he is arrested on 21.02.2024 and as on today he is incarcerated for 1 year 1 month & 11 days. He has no antecedents. *Prima facie* Ms. Charania has persuaded the Court to consider the transgression of the procedure established

for the purpose of sampling at the time of seizure under Rule 3 of the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (for short "**said Rules**") read with the read procedure contemplated under Rule 10 at the time of drawing of inventory. She would submit that seizure panchnama appended at page No. 67 of the Application would show that the alleged contraband was kept in a Pista colour envelop whereas the same alleged contraband when produced during inventory before the learned Magistrate was recovered and removed from a Khaki colour envelop. In that regard, my attention is drawn to page No. 91 of the Application which is nomenclatured as the inventory certificate. She would submit that the procedure as contemplated under Sections 52-A(2) & (3) of the NDPS Act read with Rules 8 & 18(1) of the said Rules has not been complied with by prosecution and has given a complete go by. My attention is drawn to the certificate issued by Magistrate which is appended at page No. 93 of the Application and she would submit that there is complete absence of not only the Application to be made to the Magistrate which is required to be filed under Section 52-A(2) which necessarily identifies the alleged contraband which has been seized, but there is also absence of the mandatory certificate which is required to be issued in Form 5 under Rule 8 read with Rule 18(1). She would therefore persuade the Court

to consider that the case of the prosecution would stand vitiated in the aforesaid facts and Applicant would be entitled for bail.

4. *Per contra* Ms. Ganapathy, learned APP has however drawn my attention to the seizure panchnama and read the same along with inventory panchnama to conclude that since the weight of the alleged contraband in the two envelopes is the same, there is a probability that it could be a typographical mistake in mentioning the precise colour of the envelop. She would persuade the Court to consider the fact that seizure of the alleged contraband being of commercial quantity rigors of Section 37 would apply and therefore present Application be rejected.

5. I have heard the learned Advocates at the Bar and perused the record of the case. Applicant before me is a delivery boy working with Zomato. He is a young offender of 22 years of age. He has no antecedents. The procedure which is required to be followed by the prosecution as applicable at the time of search and seizure as also inventory is duly contemplated in the said Act and Rules. There cannot be any ambiguity in identification of the alleged contraband which is seized at the time of seizure and which is thereafter placed before the Magistrate for the purpose of inventory. Time gap between the two independent procedures of seizure and inventory is inevitable. Tampering cannot be ruled out if the envelop containing the alleged

contraband is changed during the interregnum. That apart in between the contraband is required to be kept in the Malkhana and therefore when the envelop changes altogether, a doubt arises. Seizure and sampling rules read with inventory rules are duly stated and are required to be followed by the prosecution under Rules 3 and 10 of the said Rules. That apart *prima facie* there is a clear transgression in the present case in following the procedures under Section 52-A(2) and (3) of the NDPS Act read with Rules 8 & 18(1) of the said Rules also. In that view of the matter, the case of the prosecution *prima facie* stands vitiated and benefit of doubt will have to be given to the Applicant. 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.15,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.15,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) 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;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) 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.

6. 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.

7. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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