

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 763 OF 2025

Jahid Chand Sayyed

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Ms. Ashwini Achari for Applicant
- Ms. Savita M. Yadav for Respondent - State
- Mr. Jagdish Gavit, API, Anti Narcotics Centre, Thane Crime Branch

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 1, 2025

P. C.:

1. Heard Ms. Achari, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail in connection with C.R.No. 869/2023 registered with the Manpada Police Station 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. *Prima facie* clear transgression of the provisions of Section 42 read with Section 50 of the NDPS Act are seen in the present case. When the Applicant was apprehended, he was given appraisal letter which is appended at page No. 50 of the Application. The appraisal letter itself which is written in Marathi prefixes the word "न्याय" before

the word "दंडाधिकारी" (Magistrate). What is contemplated under Section 50 is a right to be appraised to the person who is about to be searched to be taken before the nearest Magistrate or Gazetted Officer and nothing more. This specific dichotomy as observed in the appraisal letter is covered and decided by the decision of this Court in the case of *Ashwinikumar Sarvansingh Chouhan v. State of Maharashtra*¹ wherein the Court was faced with an identical situation where the word "न्याय" before the word "दंडाधिकारी" (Magistrate) was used in the appraisal letter and the Court after analyzing the provisions of Section 50 as also after referring to the decisions of the Supreme Court in the case of *State of Punjab v. Baldev Singh*² held that appraisal of right under Section 50 seems to have been conveyed wrongly to the accused person. That apart, Ms. Achari has also drawn my attention to the seizure panchnama wherein the seizure of the alleged contraband has been made by the prosecution merely on the basis of their observations on the ground of their experience stating that the alleged contraband was a crystal powder having white colour, it had some smell and on touching it according to their experience the alleged contraband was MD. This is in complete transgression of the seizure rules which are contemplated under the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal)

1 2001(4) Mh.L.J. 57

2 (1999) 6 SCC 172

Rules, 2022 (for short "**said Rules**"). The prosecution officers are duly equipped with the testing kit and all other paraphernalia necessary for the testing of the alleged contraband. However, *prima facie*, the requisite testing has not been conducted in the present case. That apart, it is observed that pursuant to recovery of the alleged contraband, prosecution officers have mixed the substance recovered from four different zip pouches and thereafter weighed them together, which is impermissible under the law. Said action on the part of the prosecution is impermissible in law and has been duly covered by the decision of this Court in the case of *Jitendra Subhash Chavan v. The State of Maharashtra*³.

4. In view of the above, the case of seizure of the prosecution *prima facie* stands vitiated for not complying with the mandatory provisions of the NDPS Act discussed herein above and therefore benefit of doubt will have to be given to the Applicant. Considering the incarceration of the Applicant for 1 year 5 months & 5 days, 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.25,000/- with one or two sureties in the like amount;

3 Order dated 04.03.2025 in Bail Application Nos. 2818/2024 & 3832/2024

- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- 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.

5. 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.

6. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date: 2025.04.02
13:18:35 +0530