

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 876 OF 2025

Faisal Akbar Maknoja	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 1220 OF 2025

Riyaz Hussain Patel	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

-
- Mr. Kamlesh Mahadev Satre, Advocate for Applicant in BA No.876 of 2025.
 - Mr. Taraq Sayed, Advocate for Applicant in BA No.1220 of 2025.
 - Ms. Mahalakshmi Ganapathy, APP for State.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025

P. C.:

1. Heard Mr. Satre, learned Advocate for Applicant in BA No.876 of 2025; Mr. Sayed, learned Advocate for Applicant in BA No.1220 of 2025 and Ms. Ganapathy, learned APP for State in both Applications.

2. Accused No.1 is Applicant in BA No.876 of 2025 whereas Accused No.2 is Applicant in BA No. 1220 of 2025. Accused No.1 is

arrested on 31.12.2023 whereas Accused No.2 is arrested on 03.01.2024.

3. Mr. Satre, learned Advocate for Applicant No.1 has drawn my attention to the arrest / Court surrender form which pertains to the Applicant i.e. Accused No.2. *Prima facie* perusal of the said arrest / Court surrender form shows that there is overwriting with respect to the date on which the said form is filled up and the corresponding date of arrest does not match with the FIR. *Prima facie* on the face of record it appears incongruous also. The same if juxtaposed with the arrest / Court surrender form of Accused No.1 Faisal appended at page No.202 of the Application bearing CR No.1235/2023 dated 31.12.2023 does not tally since both accused persons are arraigned as accused in the same crime. The prosecution needs to explain the nexus of the aforesaid two different dates in the arrest / Court surrender form pertaining to the two Accused persons before me as *prima facie* infirmity is noticed by Court.

4. Learned Advocates for both Applicants have stated that there is violation of provisions of Section 42 of the NDPS Act read with NDPS (Seizure, Storage, Sampling And Disposal) Rules, 2022 in as much as raids have been conducted by prosecution officers in the private premises between sunset and sunrise without an authorized warrant. That apart there is no drawing of any representative samples

either and therefore alleged transgression of sub-section 2 of Section 42 and Section 52A read with NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 is also argued by both the learned Advocates.

5. Insofar as Accused No.1 is concerned Section 50 notice appended at page No.92 of the Application is given by the Police Inspector who is the authorized officer. However pursuant thereto it is *prima facie* seen that panchanama appended at page No.22 is conducted by Asst. Police Inspector Afraz Shaikh who is one of the member of the raiding party on the instructions of the authorized officer Mr. Deepak Sawant. Mr. Shaikh is not the authorised Officer. Statement in FIR appended at page No.14 of Application is filed by one Mr. Thombre, Police Sepoi (Police Constable) and neither by Mr. Sawant nor by Mr. Shaikh. Aforesaid discrepancy and infirmity goes to the root of the matter insofar as transgression of statutory provisions of Section 42 are concerned in the present case. The prosecution need to explain the aforesaid discrepancies which writs large on the face of record.

6. That apart it is seen in the seizure panchanama and inventory panchanama that names of witnesses are different and most importantly names of witnesses are absent and are not reflected in the FIR statement filed by Police Constable Mr. Thombre.

7. Aforesaid dichotomy be explained by the learned Prosecutor after taking instructions on the next adjourned date to enable this court to consider the Bail Applications of both Applicants.

8. Affidavit-in-Reply, if any, is directed to be filed within a period of 4 weeks from today positively. If the same is not filed before the next adjourned date no further time shall be granted to prosecution to file the same which shall be noted by prosecution and present Bail Applications shall be heard on their own merits.

9. Stand over to **7th July, 2025.**

[MILIND N. JADHAV, J.]