

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2235 OF 2024

Gantavya Kumar Chatterjee	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 945 OF 2025**

Vicky Bharat Kalyani	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION (ST) NO. 8183 OF 2025**

Sonam Premsingh Bodh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Tanvir Kazi a/w. Mr. Kushal Mor and Mr. Apoorv Srivastava, Advocates for Applicant in Bail Application No.2235 of 2024.
 - Mr. Vishal V. Rankhambe a/w. Mr. Vivek Pandey, Mr. Chaitanya M. Bagul, Afsar Ansari, S.K. Tripathi, Advocates i/by Vivek Pandey for Applicant in Bail Application No.945 of 2025.
 - Mr. Priyank Kapadia a/w. Mr. Harshad Kandalkar, Advocates i/by A.H. Legal for Applicant in Bail Application (St.) No.8183 of 2025.
 - Ms. Savita M. Yadav, APP for Respondent – State in Bail Application No.2235 of 2024 and Bail Application No.945 of 2025.
 - Ms. Shilpa K. Gajare – Dhumal, APP for Respondent – State in Bail Application (St.) No.8183 of 2025.
 - Mr. Rohit Sawant, PI, Mr. Redekar, HC and Mr. Kale, HC, Crime Branch, Mumbai Railway present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2025.

P.C.:

1. Heard Mr. Kazi, learned Advocate for Applicant in Bail Application No.2235 of 2024; Mr. Rankhambe, learned Advocate for Applicant in Bail Application No.945 of 2025; Mr. Kapadia, learned Advocate for Applicant in Bail Application (St.) No.8183 of 2025; Ms. Yadav, learned APP for Respondent – State in Bail Application No.2235 of 2024 and Bail Application No.945 of 2025 and Ms. Gajare – Dhumal, learned APP for Respondent – State in Bail Application (St.) No.8183 of 2025.

2. Bail Applications listed before the Court are Bail Application No.2235 of 2024 filed by Accused No.1 and Bail Application No.945 of 2025 filed by Accused No.2. Accused No.3 has filed Bail Application (St.) No.8183 of 2025. That Application is not listed on board. However, when the present Bail Applications are called out for hearing, learned Advocate Mr. Kapadia appearing for Accused No.3 would persuade the Court to consider hearing Bail Application of Accused No.3 alongwith the bail Applications of the other two co-accused persons. Bail Application (ST) No. 8183 of 2025 is taken up on board for hearing forthwith with the other two Bail Applications. Facts in all 3 Bail Applications are the same as all 3 Applicants are co-accused in the same crime.

3. On the previous occasion on 07.04.2025, I heard Bail Application No.2235 of 2024 and the following order was passed:-

“1. Heard Mr. Mor, learned Advocate for Applicant and Ms.

Yadav, learned APP for State.

2. Applicant is indicted in an NDPS offence for the past two years. Learned Advocate for Applicant has drawn my attention to letter dated 25.07.2023 written by the Police Inspector to the Police Commissioner appended at page No.340 of the Application wherein he has stated that crime in the present case should have immediately been transferred to ACB after a the misdeeds of the Police is suspected. Insofar as the issue of misdeeds is concerned learned Advocate for Applicant has drawn my attention to the seizure panchanama in the present case. He would submit that prima facie reading of the seizure panchanama would reveal that Applicant was apprehended at the Railway Station alongwith a haver-sack and trolley bag which were emptied by the prosecution officers in entirety on the Railway Station itself under CCTV coverage and nothing incriminating was found therein. He would submit that, in that view of the matter, case of the prosecution of the alleged contraband namely 2.2 Kgs of Charas being recovered from the bag of the Applicant is false. That apart he would draw my attention to the following the statutory provisions of Section 42(2) r/w Section 52A (2) (3) of the NDPS Act which have been transgressed and needs to be explained by the prosecution.

3. Learned APP shall take appropriate instructions on the aforesaid submissions made by learned Advocate for Applicant and more specifically with respect to the letter appended at page No.340 of the Application and apprise the Court on the next adjourned date.

4. Stand over to 16th April, 2025 (F.O.B.). To be listed on the ‘Supplementary Board’.

4. Today, Ms. Yadav, learned APP on taking appropriate instructions would make two submissions before the Court in response to directions contained in paragraph No.2 of the above order. She would submit that pursuant to receipt of the letter dated 25.07.2023 appended at page No.340 of the Application immediate action was taken by the concerned Authorities and the Commissioner of Police in

accordance with law and on 29.07.2023 the entire team of the prosecution which was involved in apprehending the Accused persons in the present case referred to in the said letter was suspended and substituted by a new team of prosecutors. She would submit that immediately thereafter on that date, entire investigation in the matter was transferred to the Crime Branch / Local Crime Branch who investigated the matter further thereafter. In respect of the issue of fact stated in paragraph No.2 of the order, she would persuade me to consider recording of the CCTV footage and would submit that it is prosecution case the alleged contraband was recovered from the bag belonging to Accused No.1.

5. After hearing the learned Advocate for Accused No.1 on the previous day about the specific circumstances in which he was apprehended and arrested this Court had specifically directed the prosecution to acknowledge the fact that when the CCTV footage is seen, whether any contraband was recovered from the bag of Accused No. 1. Accused No.1 is a Sound Engineer by profession residing in Dehradun and was on a trip to Mumbai when on getting down at Mumbai Central Railway Station on 11.05.2023, he was apprehended for possessing contraband and was subsequently arrested. There is *prima facie* no clear answer coming from the prosecution.

6. *Prima facie* the letter appended at page No.340 of the Application filed by Accused No.1 raises a clear doubt and the said doubt or suspicion is further ascertained when immediate action is taken for replacing the entire prosecution team which has been informed by the learned prosecutor. In that view of the matter, it will not be appropriate for the Court to delineate any further opinion on the issue of seizure and recovery pertaining to the merits of the matter as *prima facie* prosecution case stands vitiated. Prosecution can prove the complicity of Accused No. 1 in trial.

7. In so far as Accused No.2 is concerned, he was arrested after a hiatus of more than 1 year and 4 months i.e. on 29.09.2024. He is a real estate agent in Bandra, Mumbai. Case of the prosecution against Accused No.2 is that he is the person who booked the alleged contraband parcel which was allegedly ferried by Accused No.1 by train from Delhi to Mumbai. In so far as establishing any financial trail is concerned, Ms. Yadav, learned APP appearing for the State in Bail Application No.945 of 2025 of Accused No.2 would submit that funds for procuring and trafficking the alleged contraband were paid by Accused No.2 through a Hawala Operator namely Angadia who has been made a prosecution witnesses by prosecution and his recorded statement is appended at page No.172 of Bail Application of Accused No.2. mere statement recorded in enquiry under Section 67 of the NDPS Act would not be enough at the bail stage to show nexus of the

Accused No. 2 and the alleged money trail.

8. In so far as Accused No.3 represented by Mr. Kapadia is concerned, he is working in a hotel in Manali, Himachal Pradesh. Case of the prosecution against him is that he is the alleged supplier of the contraband. How the contraband travelled from Manali to Delhi is unexplained neither any money trail or complicity is *prima facie* established.

9. I have heard the learned Advocates appearing for the 3 Accused persons and the learned APPs appearing on behalf of the prosecution and perused the record of the case of all 3 Bail Applications.

10. Application of Accused No.3 is tendered across the bar. Since the matter is not listed on board today. For the sake of brevity all 3 Bail Applications are heard and decided by this common order. *Prima facie* what this Court observes is that case of the prosecution has become a suspect at the inception stage itself in view of the letter appended at page No.340 of the Application.

11. Be that as it may, without commenting or delineating any further on that issue, the fulcrum of prosecution case against the Accused persons is primarily based on enquiry made by the prosecution officers under Section 67 of the NDPS Act and the statements recorded therein for indictment of Accused Nos.2 and 3.

12. Needless to state that case of prosecution to establish complicity and role of the Accused persons in the crime and to establish any financial money trail can be proven by prosecution in trial. So far as incarceration of Applicants namely Accused Nos.1 to 3 in jail is concerned, it is seen that Accused No.1 is in prison since 11.05.2023, Accused No.2 is in prison since 29.09.2024 and Accused No.3 is in prison since 26.10.2024,

13. Charge is framed on the previous date before the Trial Court as informed by the learned Advocates. As per the charge-sheet prosecution would be examining a probable 31 witnesses in the trial.

14. Considering the indictment of the Accused persons on the basis of statements recorded under Section 67 of the NDPS Act as also dichotomy observed with respect to the letter appended at page No.340 of Bail Application No.2235 of 2024, even though there are other transgressions which are argued by the learned Advocates for the Applicants, I am of the opinion that Applicants can be released on bail since the cases before me are fully covered by the decisions of the Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹; *Jasbir Singh Vs. Narcotics Control Bureau*² and *State Vs. Pallulabid Ahmad Arimutta*³.

1 (2021) 4 SCC 1

2 (2023) SCC OnLine Del 134

3 SLP (Cri.) No.3242 of 2022 dated 10.01.2022

15. The Supreme Court in the case of *Tofan Singh* (*supra*) Supreme Court 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 Indian 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 of India.

16. In the case of *Jasbir Singh* (*supra*) 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:-

“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* CrI. 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.”

17. In the case of *State Vs. Pallulabid Ahmad Arimutta* (supra), the Supreme Court held that CDR details of some of the accused or allegations of tampering of evidence by accused is an aspect that can

be examined at the stage of trial. Hence it is clear that statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

18. The Constitution Bench of Supreme Court in the case of *State of Punjab Vs. Baldev Singh*⁴ 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 the Section 50 of the NDPS Act which 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.

4 (1999) 3 SCC 977

19. 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.

20. In view of my above *prima facie* observations and findings. *Prima facie* the case of prosecution is based on the statements recorded under Section 67 of the NDPS Act, all 3 Applicants have made out a case for grant of bail.

21. Hence, all 3 Bail Applications are allowed subject to the following terms and conditions:-

- (i) All 3 Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) Applicants are permitted to furnish provisional cash bail of Rs.25,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs.25,000/- each within a period of four weeks after their release which shall be

accepted by the Trial Court. Applicants shall provide sureties as directed;

- (iii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 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;
- (vi) 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;
- (vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicants shall not influence 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 their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

22. 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.

23. All 3 Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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