

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3026 OF 2025**

Surjit Singh Baktavar Singh Heer	...Applicant
<i>Versus</i>	
The Union of India and Anr.	...Respondents

Mr. Mithilesh Mishra a/w Kiran Varma, *for the Applicant.*
Mr. Rushikesh Munde, Spl. PP a/w Shatabdi Netke, *for the*
Respondent No.1 - DRI.
Ms. Megha S. Bajoria, APP, *for the Respondent No.2 - State.*

CORAM DR. NEELA GOKHALE, J.
DATED: 11TH DECEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with Case F. No. DRI/MZU/C/INT-107/2024 dated 9th January, 2024 registered with the Directorate of Revenue Intelligence, Mumbai Zonal Unit ('DRI'), for the offences punishable under Sections 8(c), 21(c), 28, 29, 30 read with Sections 35 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. There are in all four accused persons involved in the present crime.

3. The facts of the case, as discerned from the FIR, are that, acting on an intelligence received by the officials of the Directorate of Revenue Intelligence, Mumbai Zonal Unit, a team comprising of intelligence officers was constituted. They intercepted a brown-coloured truck coming towards Chintamanvadi Nakabandi Chowki of Kasara Police Station, Nashik-Mumbai Road (National Highway No. 44). After following the due process prescribed under the NDPS Act, the driver of the truck and the person sitting next to him as well as the truck itself were searched. A bag containing contraband, 14 gms. of Ganja and 9.389 kgs. of Opium, were found in a bag, which was concealed behind the driver's seat. The quantity of the contraband recovered from the truck is above commercial quantity. Hence, the person sitting next to the driver of the truck, namely Mr. Bablu Khan was arrested on 9th October, 2024.

4. On further investigation, Mr. Bablu Khan, co-accused, revealed that the said contraband was to be delivered to the Applicant herein, at Avatar Dhaba situated at around 40 Kms. away from the place where the truck was intercepted. The packets of contraband recovered from the bag in the truck were opened and a small quantity from each pouch was tested with the help of the field drug detection kit. The samples tested positive for Opium. Another DRI officer namely, one Anuj Dahiya came to the location with another person namely, the Applicant. It transpired that the DRI officer had summoned the Applicant in the matter of investigation pertaining to the seizure of Opium from the truck. Mr. Bablu Khan immediately recognized the Applicant as the person to whom he was to deliver the Opium. All the mandatory provisions under the NDPS Act were complied. Statement of Bablu Khan was recorded under the provisions of Section 67 of the NDPS Act. He disclosed that he was aware of the nature of the goods that he was carrying in the truck. The same were handed over to him by one friend called Niyamat Ali. He used

to regularly ferry contraband on behalf of Niyamat Ali while driving his truck on behalf of the transport company. He also disclosed that Niyamat Ali had many clients living and operating enroute. Niyamat Ali used to pay Bablu Khan money to ferry the contraband. The Opium was to be delivered to the Applicant herein, who was also a regular client of Niyamat Ali and a dealer of drugs.

5. Based on the details revealed during interrogation of Bablu Khan, a search was conducted at the restaurant premises of the Applicant but nothing was recovered from the restaurant nor his residence. The Applicant was summoned to appear before the DRI officers and his statement was recorded on 9th October 2024. He also confirmed the facts as stated by Bablu Khan. He stated that he used to supply the contraband to various truck drivers who stopped at his Dhaba for payment. Thus, the Applicant was arrested on 9th October 2024 after following the due process of law. Another accused namely, Vinod Vasoonia was also summoned. His statement

was recorded. He was the person who used to load the consignments in the truck for transportation. He also stated that the Opium was to be delivered to the Applicant.

6. Preliminary investigation revealed involvement of the Applicant along with others in the said offence. The CDR containing call records between Niyamat Ali and the Applicant revealed frequent calls between them immediately before the seizure of the contraband. The Applicant had stated that upon the delivery of the contraband to him, he would make the payment to Niyamat Ali in cash using unofficial *hawala* operators. Sometimes, cash would be given to Bablu Khan to give it to Niyamat Ali. Screenshots of currency notes were recovered from his phone which was used by him in the course of *hawala* transactions. An image of a two-rupee note was recovered from the Applicant's mobile phone as well as the mobile phone of Niyamat Ali. Thus, a complaint was filed by the DRI against the present Applicant and co-accused.

7. The Applicant made an application seeking bail before the Spl. NDPS Court, Kalyan, however, by order dated 19th June, 2025, the said Application was rejected. Hence, the Applicant has filed the present Bail Application for the reliefs as prayed.

8. Mr. Mishra, learned counsel for the Applicant, submitted that nothing was recovered from the present Applicant, and he is arrested only on the statement of the co-accused namely, Bablu Khan. He submits that this is a case of false implication and there is no other material available on record to indicate complicity of the Applicant in the said offence. He also submits that the Applicant is the sole bread winner of his family. Although, the charge-sheet was filed on 19th April, 2025, till date trial has not commenced. He also submits that there are no criminal antecedents against the present Applicant. He further submits that the Applicant is in custody for 13 months and on the ground of long incarceration, the Applicant be released on bail.

9. Per contra, Mr. Munde, learned Special Public Prosecutor representing the DRI, has brought to my attention the Affidavit-in-Reply filed on behalf of the DRI. The said affidavit is affirmed by Kumar Ambrish, Deputy Director, DRI, Mumbai Zonal Unit, dated 21st November, 2025. The role of the Applicant in the present offence is described in detail in the Affidavit. Mr. Munde submits that all the compliances under the NDPS Act are made. Information note is on record. There is compliance of Section 50 of the NDPS Act. He has drawn my attention to the panchanama dated 9th October, 2024, drawn at Nashik Mumbai Highway. There is a video / audio recording of this seizure carried out by the DRI. The CA report has tested positive for the contraband. He further submitted that a mobile phone was recovered from the person of the present Applicant. The said mobile phone contained an image of a two-rupee currency note. The same image is also recovered from the mobile phone of co-accused - Niyamat Ali. This demonstrates direct connection and live link between the co-accused and the present Applicant. Mr. Munde also submits

that the said mobile phone was voluntarily submitted by the Applicant to the DRI. A proper chain of custody of the mobile phones was maintained during the forensic examination of the phones. He also pointed to the CDR showing frequent calls between the Applicant and Bablu Khan. The calls are more frequent immediately before the seizure of the contraband. Mr. Munde, hence, prayed that the present Bail Application be rejected.

10. I have heard learned counsel for the respective parties and perused the record of the case with their assistance.

11. The standard prescribed for the grant of bail is ‘reasonable ground to believe’ that the person is *not* guilty of the offence. Interpreting the standard of ‘reasonable grounds to believe’, a two-judge Bench of the Supreme Court in *Union of India v. Shiv Shanker Kesari*¹, held that:

1 (2007) 7 SCC 798

“7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word “reasonable” has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

(See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

9. xxxxxxxx

10. *The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315])*

11. *The court while considering the application for bail with reference to Section 37 of the NDPS Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”*

12. Based on the above precedent, the test which the High Court and this Court are required to apply while

granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

13. In the present case, while canvassing grant of bail to the Applicant, Mr. Mishra has adverted to two circumstances namely, (i) no recovery was made from the Applicant and (ii) the Applicant was arrested on 9th October 2024 and till date the trial has not concluded.

14. I have gone through the reply filed by the DRI. The Affidavit-in-Reply tabulates details of the CDR records between Bablu Khan and the present Applicant. The calls between them are frequent, just before the seizure of the contraband from the truck. This shows that they were both actively involved in the present offence and were constantly in

touch with each other. Although, no recovery was made from the present Applicant, it is alleged that he is the receiver of the contraband being transported by Bablu Khan and supplied by Niyamat Ali. The image of the two-rupee note found on the mobile phone of the Applicant and the same image found on the mobile phone of Niyamat Ali establishes a live link between the two accused exchanging cash for the contraband by way of hawala transactions.

15. At this stage, Mr. Mishra places reliance on a decision of the Supreme Court in the matter of ***Bharat Chaudhary v. Union of India***². I have gone through the said decision. The Supreme Court in the facts of that matter held that reliance on printouts of WhatsApp messages downloaded from the mobile phone and devices seized from the office premises of the accused, cannot be treated as sufficient material to establish a live link between the Applicant therein and the co-accused, even when the report in respect of the said device were awaited. In the present case, the forensic

2 (2021) 20 SCC 50

report is received by the DRI and the same is positive. The facts in the Bharat Chaudhary matter are different from that in the present matter. The images from the phone are recovered pursuant to the statements of the Applicant and the mobile phone is handed over to the police by the Applicant himself.

16. Mr. Munde, on the other hand, places reliance on a recent decision of the Supreme Court in the matter of *Union of India v. Vigin K. Varghese*³, wherein the Supreme Court observed that a finding regarding existence of reasonable grounds to believe that the Applicant is not guilty of the alleged offence, is not a casual observation. In fact, it is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. The Supreme Court further observed that a conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement,

3 2025 SCC OnLine SC 2440

risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance. Insofar as the facts of the present case are concerned, the CDR details, the image of the two-rupee note found in mobile phone of the Applicant matching the image of the two-rupee note in the mobile phone of co-accused-Niyamat Ali, establishes the financial connect between the parties.

17. The other ground of bail, as Mr. Mishra has argued, is that the Applicant is in custody for 13 months and the trial has not commenced as yet. However, in the facts and circumstances of the present case, the allegations are serious, inasmuch as not only the recovery from co-accused is in excess of commercial quantity, but the live link between the said co-accused and the present Applicant is sufficient to implicate the present Applicant in the said offence. *Prima facie* this Court is of the opinion that the Applicant is involved in drug trafficking in an extremely ingenious manner, and had been frequently in touch with the main supplier of contraband

as well as the conduit between them namely, Bablu Khan, at whose instance the contraband was recovered from the truck.

18. When an accused is alleged to be involved in a narcotic network of a kind as seen in the present case, the bar under Section 37 of the NDPS Act assumes heightened significance. The involvement of an organized network indicates a deeper and more structured participation in the commission of the offence, thereby raising serious concern about potential re-offending, tampering with evidence or influencing witnesses, if released on bail. Mere assertions or absence of recovery from the accused may not suffice when the material on record *prima facie* discloses a nexus with a narcotic network. The gravity of the offence, coupled with the organized structure of criminal activity, especially supplying contraband to truck drivers at the Applicant's *Dhaba*, serving as a pit stop, who drive long distances, is extremely dangerous even in context of potentially causing road accidents, etc.,

justifying a more cautious approach in grant of bail in NDPS matters.

19. Moreover, this Court is of the view that as the accused is charged with the offence punishable with the sentence of 10 to 20 years of rigorous imprisonment, it cannot be said that the Applicant is incarcerated for an unreasonably long time. Therefore, this is not a fit case where the Applicant can be granted bail.

20. In view of the aforesaid discussion, Bail Application is rejected.

21. 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)