

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

**INTERIM APPLICATION NO.488 OF 2025
IN
CRIMINAL APPEAL NO.78 OF 2025**

Kartik Ramlingam Naik Applicant

versus

The State of Maharashtra Respondent

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- Ms. Ashwini Achari a/w Mr. Anish Pereira i/b. Mr. Taraq Sayed, Advocate for Applicant.
- Ms. Ranjana D. Humane, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 12th AUGUST, 2025**

P.C. :

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant. The Applicant was the accused No.2 before the learned NDPS Special Judge, Greater Bombay, in NDPS Special Case No.30/2011. The learned Judge vide his Judgment and Order dated 23/12/2024 convicted the Applicant for commission of offence punishable u/s 20(b)(ii)(B) r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). He was sentenced to suffer rigorous

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imprisonment for 10 years and to pay a fine of Rs.50,000/- and in default of payment of fine to suffer rigorous imprisonment for six months.

2. The accused No.1 Indrakumar Suraram was similarly convicted and sentenced. Both the accused i.e. accused No.1 and the present Applicant were acquitted from the charges of commission of the offence punishable u/s 8(c) r/w 29 of the NDPS Act, 1985.
3. Heard Ms. Ashwini Achari, learned counsel for the Applicant and Ms. Ranjana D. Humane, learned APP for the State.
4. The prosecution case is that on 17/08/2008, PHC Nale attached to ANC, Kandivali Unit, Mumbai, received a secret information about two persons coming to Kandivali with Ganja. The information was shared with PI Gaikwad, who instructed his staff to call two Panchas. The information was sent to the office of DCP, ANC, Cuffe Parade, Mumbai. The staff of ANC, Kandivali

Unit, made preparation to conduct the raid. They went to the spot carrying equipments like official brass seal, sealing and labeling articles, weighing scale etc. At about 02.00 to 02.15 p.m. one Autorikshaw came at the spot as per the information. Two persons got down from the Autorikshaw. Both of them were having one jute gunny bag each. They went to a bus stop. The raiding party confirmed their identity with the information which was received. Both of them were confronted. The accused No.1 Indrakumar was found with 10 kgs of Ganja in his gunny bag and the Applicant was found having 7 kgs of Ganja. The samples were drawn. Both of them were arrested. Their personal search was taken after making them aware of their rights. The FIR was lodged and the investigation was carried out. At the conclusion of the investigation, the charge-sheet was filed and the trial was conducted before the learned Special Judge. During the trial, the prosecution examined 4 witnesses.

5. P.W.1 Head Constable Kindre was the carrier of the sample to FSL.

6. P.W.2 Police Naik Rajesh Barge was attached to ANC. He had taken part in the raid.
7. P.W.3 Sandeep Chetti was the Chemical Analyser, who had submitted the report that the contraband seized from the accused was Ganja.
8. P.W.4 PHC Nale had taken part in the raid. He had received the secret information.
9. Learned counsel for the Applicant submitted that the Applicant was acquitted from the charges of commission of the offence punishable u/s 29 of the NDPS Act and therefore he was not responsible for the total 17 kgs of Ganja. At the highest the allegations against him was of carrying a gunny bag containing 7 kgs of Ganja. She submitted that the prosecution has deliberately not examined the Panchas and the main officer PI Gaikwad, under whose supervision, the raid was conducted. No explanation is offered by the prosecution. There is no independent corroboration to the raid conducted by the officers

of ANC Kandivali Unit. There is no reason to impose the maximum sentence of 10 years on the Applicant. She relied on the order passed by a co-ordinate Single Judge bench of this Court in the case of ***Shashikant Chandrakant Thorat Vs. State of Maharashtra*** as reported in ***2020 SCC OnLine Bom 6405***. She submitted that while granting bail in that case the learned Judge had taken into account the fact that the Applicant was on bail during the trial and what was found with him was non-commercial quantity of Ganja. She submitted that same is the situation in the present case and therefore similar consideration be applied in granting bail to the Applicant.

10. Learned APP opposed these submissions. She relied on the evidence of P.W.2 and P.W.4, in particular, who had taken part in conducting the raid. She submitted that there is no reason to disbelieve their evidence. She submitted that their evidence is cogent and reliable.

11. I have considered these submissions. The offence pertains to August 2010. For 14 long years the Applicant was on

bail. There are no allegations and he had misused that liberty. He was taken in custody after his conviction on 23/12/2024. Thus, he is in custody for about 8 months after his conviction. Though the prosecution has examined PW.2 and PW.4 for proving the contents of the Panchanama, they have not offered any explanation as to why the independent Panchas were not examined and as to why the supervising officer PI Gaikwad was not examined. The effect of this lapse will have to be considered at the final hearing stage. The Appeal is already admitted by a coordinate bench of this Court.

12. All these issues will have to be decided finally. However, I find force in the submissions of the learned counsel that a Single Judge bench of this Court has observed that the Applicant therein was found with non-commercial quantity and the Applicant was granted bail during the pendency of the Appeal as mentioned in the case of ***Shashikant Thorat***. In the present case also, the Applicant was found with 7 kgs of Ganja, which is a non-commercial quantity. He was on bail during trial. There are no allegations of misuse of liberty. The Applicant was

22 years of age at the time of incident. There is no independent corroboration to the prosecution case in the form of Panchas evidence and no explanation is offered as to why the Panchas and the main officer PI Gaikwad were not examined by the prosecution.

13. Considering his young age, at that time, there is possibility that the ultimate sentence can be reduced. The learned Judge has imposed maximum sentence on him. The question of lesser sentence can also be decided at the final hearing stage. There are no criminal antecedents against him.

14. Considering all these factors, I am inclined to grant bail to the Applicant.

15. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.78 of 2025, the Applicant is directed to be released on bail on his furnishing

P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only), with one or two sureties in the like amount.

- (ii) The Applicant shall report to the office of ANC Kandivali Unit, on first Monday of every month between 04.00 p.m. to 06.00 p.m. for a period of one year from today.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)