



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.133 OF 2025
(Haider Khan Anwar Khan Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.V. Sirpurkar, Advocate for the applicant.
Mr. A.M. Ghogare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 28, 2025.

Apprehending the arrest at the hands of police in connection with Crime No.5/2025 registered with Police Station Bibi, District Buldhana for the offences punishable under Sections 20(b)(ii) and 8(c) Narcotic Drugs and Psychotropic Substances Act, 1985, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of secret information received that there was a blockage at the Zortiga to Deulgaon coal road by the police and then they seized a packet of Ganja weighing 10kg 300 gram from co-accused - Sheikh Ismail Sheikh Mohammad, Javed Khan Hameed Khan and Shehbaz Khan Ajaz Khan from the bag which was seized by following the due process. The said co-accused were on a motorcycle and the motorcycle was intercepted and the contraband articles were seized. The samples were obtained and during investigation the co-accused has disclosed the name of the

present applicant, and therefore, he is apprehending arrest at the hands of police.

3. Learned Counsel for the applicant submitted that as far as the statement of the co-accused is concerned which is not admissible in evidence against the present applicant. Except the statement of the co-accused there is no other material to connect the present applicant with the alleged offence. He also submitted that the decision of **the State of Haryana Vs. Samarth Kumar [2022 LiveLaw (SC) 622]** will not be applicable in the present case as the quantity is not the commercial quantity. In view of that, he be protected by granting anticipatory bail. He further submitted that besides the statement of the co-accused there is absolutely no material against the present applicant to connect him with the alleged offence.

4. Learned APP strongly opposed the application and submitted that in view of the observation of the Hon'ble Apex Court in the case of *the State of Haryana Vs. Samarth Kumar* (supra) the observation of the Hon'ble Apex Court in the case of **Tofan Singh v/s State of Tamil Nadu, [(2021) 4 SCC 1]** not to be considered at the stage of the anticipatory bail. At the most it can be considered while considering the regular bail application. He submitted that in view of that, the application deserves to be rejected as the involvement of the present applicant reveals from the statement of the co-accused. Hence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. On perusal of the investigation papers from which it reveals that on secret information the Investigating Officer have intercepted one motorcycle and three co-accused were apprehended and from them the quantity of 10Kg 300 gms. of contraband articles was seized. During investigation, the statement of the co-accused are recorded and during their statement they have disclosed the name of the present applicant. On the basis of the same, the applicant is apprehending arrest at the hands of police. Admittedly, the quantity which was seized from the co-accused is not a commercial quantity. It is more than the smaller quantity. Section 2(viia) and 2(xxiiia) of the NDPS Act classifies that seized contraband from an accused individual into two categories i.e. "Small and Commercial quantity". Any amount that falls between the upper limit of small quantity and the lower threshold of the commercial quantity is referred to an intermediate quantity. The prescribed sentence depends on the specific category based on the drug weight. As per Section 2(xxiiia) of the NDPS Act "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. As far as the bar under Section 37 is concerned which specifically designates the offences under the act as cognizable and non-bailable and it also states that the legislature introduced sub-section 1 which expressly states

that all offences under the NDPS Act are cognizable. The bar under Section 37 deals with Offences to be cognizable and non-bailable. Sub-Section (1) has non-obstante clause and sub-Section (1)(a) speaks about the every offence punishable under this Act shall be cognizable; whereas the (b) specifically states that no person accused of an offence punishable for (offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity) shall be released on bail or on his own bond unless (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. On perusal of the sections applied in the present case wherein the punishment upto 10 years is provided. As far as bar under Section 37 is concerned which applies only to the cases wherein the commercial quantity is seized. Thus, Section 37 of the NDPS Act designates the offences under the Act as cognizable and non-bailable; however, a careful textual examination reveals that if the legislature has intended to classify all offences as non-bailable, it could have explicitly done so by employing a simple all offences. The section aims to make all offences cognizable but only certain offences non-bailable. Section 37(1)(b) imposes specific restrictions on bail but only in relation to the offences involving commercial quantities or those

punishable for offences under section 19 or section 24 or section 27A. It categorically mandates that individual accused of such offences shall not be released on bail on their own bond where the Public Prosecutor has been given an opportunity to oppose the application for such release.

6. In view of the above legal provisions, as far as the facts of the present case are concerned it is not a commercial quantity seized from the other co-accused. Moreover, as far as the present applicant is concerned only on the basis of the statement of the co-accused his involvement reveals. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Haider Khan Anwar Khan in connection with Crime No.5/2025 registered with Police Station Bibi, District Buldhana for the offences punishable under Sections 20(b)(ii) and 8(c) Narcotic Drugs and Psychotropic Substances Act, 1985, be released on anticipatory bail, on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station twice in a week i.e. on every Monday and Thursday between 10.00 AM and 1.00 PM and shall cooperate with the investigating agency.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(v) The applicant shall not leave the jurisdiction of Khamgaon, District Buldhana without prior permission of the District Court, Khamgaon.

(vi) The applicant shall not indulge himself in similar type of the offences. A single incident reported would lead to the cancellation of bail.

7. The contravention of any of the condition would lead to the cancellation of bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)