



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO. 572 OF 2025

(Shivraj s/o Budharam Mahawar

Vs.

Intelligence Officer, Directorate of Revenue Intelligence (D.R.I.), Thr.
KVL Narasimham, Regional Unit, CGO Complex, 6th Floor, B-Wing,
Nagpur)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.D. Sahoo, Advocate for the Applicant.
Ms. Ketaki Jaltare, Advocate for the Non-applicant.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 23rd JUNE, 2025

1. By this application, being moved under Section 167(2) of Criminal Procedure Code and Section 187 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the applicant seeks regular bail in connection with Special Criminal Case (NDPS) No.416/2023 registered with the Non-applicant/Directorate of Revenue Intelligence, Nagpur (the DRI) for offences punishable under Sections 8(c), 20, 27-A, 28, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The applicant is arrested on 18.03.2024 and since then he is in jail.

3. As per the contention of the learned Counsel for

the Applicant that the alleged offence had took place on 09.08.2022 at Mouda Toll Plaza and the DRI had filed complaint belatedly on 11.08.2022 alleging that upon receipt of the secret information a truck was intercepted at Mouda Toll Plaza and the driver and helper of the said truck ran away. That, concealed contraband Ganja was recovered from their truck weighing around 217.82 kilograms. The Applicant was brought on production warrant from Ajmer prison on 11.03.2024 as offence under Sections 8(c), 20, 27-A, 28, and 29 of the NDPS Act is registered against him. The DRI filed complete charge-sheet on 11.08.2023 before the Special NDPS Court Nagpur without arresting any of the prime accused. The Applicant was arrested without any evidence. It is submitted that, at the time of filing of the charge-sheet the Applicant was not arrested, and therefore, in view of Section 167(2) of Cr.P.C., the Applicant be released on bail.

4. Learned Special Prosecutor strongly opposed the said Application on the ground that initial application of the present Applicant bearing Criminal Application (BA) No. 568/2024 is already rejected by this Court on merit on 02.08.2024 and the said order is upheld by the Hon'ble Apex Court also. As far as the grounds of bail under Section 167 (2) of Cr.P.C., is concerned which is not available as the charge-sheet is already filed against the present Applicant and no liberty is granted to the present applicant by the Hon'ble Apex Court also. In view of that, the Application deserves to be rejected.

5. After hearing both the sides and on perusal of the

investigation papers it reveals that, accusations against the present Applicant is on the basis of a complaint filed by the Directorate of Revenue Intelligence i.e. DRI. It is alleged that, they have received the secret information that contraband article “Ganja” which is a narcotic drug is being illicitly transported by separating and concealing the same in a cargo vehicle bearing registration No. RJ-37-GA-1688 and the said vehicle is moving from States Andhra Pradesh to Rajasthan via Nagpur and is expected to be at “Mathni Toll Booth Mouda” Bhandara Road at about 06.00 p.m. on 09.08.2022. Accordingly, a team of five Officers and other raiding party members intercepted the said vehicle at the same toll booth in presence of two panchas. Two persons were travelling in the said vehicle. The Officers introduced themselves to the two persons and also shown their identity cards. Driver of the said vehicle introduced himself as Kishor Kumar and other person introduced himself as Pappu. On being searched the cargo portion as well as other portion of the said vehicle, they found a mobile phone belonging to Pappu, five keys, ATM Cards, Aadhar Cards, ATM Cards of Bank of Baroda and State Bank of India. In the said vehicle, 47 packets of “Ganja” weighing 217.82 kilograms were found, which were seized by following a due process of law in presence of panchas. The Officers of the DRI followed mandatory provisions and obtained samples and the samples were forwarded to the Chemical Analyzer. During investigation, it revealed that the Applicant is mastermind of the entire transportation, who loaded the said contraband in the said vehicle at Andhra Pradesh for transporting the same in the Rajasthan. The ATM Cards and Identity Card of the Applicant were retrieved. Thus, during

investigation, involvement of the Applicant was revealed and he was arrested on 18.03.2024.

6. Learned Counsel for the Applicant, submitted that the Applicant was not travelling in the said vehicle with the co-accused. He is also not named in the seizure panchanama and nothing was seized from his possession prior or after his arrest. It is further submitted that, the Applicant was not at all arrested at the time of filing of the charge-sheet. The entire case is based on CDRs from 05.05.2022 to 30.11.2022. The Applicant is a businessman dealing in marble stone and granite and he is not at all aware about the alleged transportation of the contraband from Andhra Pradesh to Maharashtra, Orissa, and Rajasthan. In view of that, the Applicant was not arrested at the time of filing of the charge-sheet, he be released on default bail.

7. *Per contra*, learned counsel for the DRI submitted that, during investigation it revealed that the Applicant is the mastermind of the said transportation. The contraband article found is of a commercial quantity. The Applicant, who is kingpin, hatched the conspiracy with other co-accused and obtained the said contraband article from the State of Andhra Pradesh. During investigation, the investigating agency collected details to show that the Applicant travelled from Andhra Pradesh to Delhi. Flight Details shows that within 6 hours span, he travelled from the Maharashtra to Andhra Pradesh and Andhra Pradesh to Delhi. Not only this, CDRs between the Applicant and co-accused Kishor Kumar and Ganpatlal, who is the owner of the said vehicle, so also money

transactions between them shows that the Applicant has not only transferred amount to Ganpatlal but also transferred to other co-accused Pappu, who is not employee of the Applicant. The Applicant has also received the amount from Kishor Kumar, the other co-accused, who was found alongwith the said vehicle. Thus, CDRs and money transactions between the Applicant and other co-accused sufficiently shows involvement of the Applicant in the alleged offence. In view of rigor under Section 37 of the NDPS Act, the application deserves to be rejected at this stage.

8. The Application is filed by the present Applicant under Section 167(2) of Cr.P.C., which provides that, procedure of investigation cannot be completed within 24 hours of an arrest. Specifically Section 167(2) of Cr.P.C., deals with the Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

9. The proviso to Section 167(2) of Cr.P.C., says that:

“(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but

no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter.”

10. The Applicant has claimed the default bail as he was not arrested at the time of filing of the charge-sheet. Admittedly, the charge-sheet is filed on 11.08.2023 and the Applicant is arrested on 18.03.2024 i.e. after filing of the charge-sheet. In view of Section 167(2) of Cr.P.C., indefeasible right occurs to the accused if the charge-sheet is not filed within 90 days. On the date of arrest of the present Applicant who was brought under the production warrant from the Ajmer prison on that day the charge-sheet was already filed, and therefore, no such right available to the present Applicant. The Hon'ble Apex Court also while rejecting the application in Special Leave to Appeal (Crl.) No. 16676/2024 observed that the charge sheet has already been filed and only liberty granted to the present Applicant to move an application for his discharge at the relevant stage when the charges are being framed before the appropriate court.

11. Thus, the ground of default bail is not available to

the present Applicant. The Applications of the present Applicant are already rejected by this Court as well as by the Hon'ble Apex Court on its own merits. In view of that, the Application deserves to be rejected. Accordingly, I proceed to pass the following order.

ORDER

i. The Application is **rejected**.

12. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)