



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

31 BAIL APPLICATION NO. 1633 OF 2025

Sunil Alias Kabir Sunder HarijanApplicant

VERSUS

The State of Maharashtra & anotherRespondents

Mr. S. J. Salunke, Advocate for Applicant
Mr. C. V. Bhadane, APP for the State.

WITH
BAIL APPLICATION NO. 1906 OF 2025

Shaikh Akbar Alias Yusuf Shaikh Jafar Applicant

VERSUS

The State of Maharashtra & anotherRespondents

Mr. S. J. Salunke, Advocate for Applicant
Mr. C. V. Bhadane, APP for the State.

CORAM : SACHIN S. DESHMUKH, J.
DATE : 9th FEBRUARY, 2026.

PER COURT :

1. Applicants seek regular bail in connection with Crime No. 0045/2025 registered with New Mondha Police Station, Dist. Parbhani, for the offences punishable under Sections 20-B, 20-K, 22-C and 22-K of Narcotic Drugs and Psychotropic Substances Act.

2. The case of prosecution is that on 08.02.2025 upon receiving secret information the complainant conducted raid at about 14.20 hours. They found two persons with four travelling bags. Having sought their identification and upon enquiry about travelling bags, it was informed that the bags were belonging to the accused. Accordingly, the search was conducted in the presence of Gazetted Officers. During search green leaves, flowers and seeds having strong smell were found. On inquiry with the accused, they disclosed the same as opium. It was weighing 32 kgs 200 gms. Accordingly First Information Report came to be registered.

3. Learned Counsel for the Applicants submits that the Applicants are falsely implicated in the offence. Further, the prosecution case suffers from serious mandatory procedural lapses. It is further submitted that it will be difficult to establish whether the alleged contraband falls within the meaning of 'ganja' as contemplated under Section 2(b) of the NDPS Act. According to the learned counsel, the investigation is complete and the charge-sheet has been filed. Since the trial is likely to take time and as such, there is no flight risk, the learned counsel has prayed that the applications be allowed.

4. The learned APP vehemently opposed the applications, submitting that the Applicants were found in possession of contraband. Considering that the weight of the seized contraband exceeds the "commercial quantity" defined under the NDPS Act, the APP prayed for rejection of the applications. In support of submissions, the learned APP has placed reliance on judgment in the case of Narcotic Control Bureau vs. Kashif [(2024) 11 SCC 372] to contend that the delay of lapse of procedural irregularity would not entitle the accused to be released on bail.

5. Upon considering the submissions of both the sides and perusing the material on record, including the charge-sheet, the learned JMFC has prepared the Inventory Certificate. The commercial quantity in relation to NDPS Act for contraband which is over and above 20 kg.

6. Admittedly, the case originates from the allegation that the accused were found in possession of ganja. Upon intercepting the vehicle in question the police discovered the contraband. A total of 32 kgs 200 gms of opium (muddemal) was seized, leading to the arrest of the Applicants.

7. The Hon'ble Apex Court in case of Prasanta Kumar Sarkar Vs. Ashis Chatterjee [(2010)14 SCC 496], has held that the mechanical grant of bail reflects non-application of mind, and outlined eight crucial factors to be considered, including reasonable ground for belief in guilt, nature of evidence and possibility of justice being thwarted.

8. Equally, the Honourable Apex Court in case of State of UP through CBI Vs. Amaramani Tripathi [(2005)8 SCC 21], has held that the Court must evaluate the prima facie evidence showing the applicant's involvement. If such evidence is credible and supports the accusations, bail may be refused. As stated earlier, the applicants were found in possession with the contraband.

9. The Honourable Apex Court in the case of Mahipal Vs. Rajesh Kumar and others (AIR 2020 SC 670) has laid down the principle that bail can be refused when the material produced by prosecution establishes a clear prima facie case. The Court should not conduct a mini-trial; it should only examine whether the available evidence links the accused to the alleged offense.

10. Considering the material available, a prima facie case is made out indicating the involvement of the accused. Equally, the Hon'ble Apex Court has consistently reiterated that while considering bail application/s in serious offenses, the Court must treat vital considerations like the nature of the charge and the nature of the evidence as paramount.

11. Similarly, the Hon'ble Apex Court in case of Ram Govind Upadhyay Vs. Sudarshan Singh **[(2002)3 SCC 598]**, has held that a judicial discretion in granting bail must not be exercised whimsically, especially in heinous / serious offences.

12. Equally, the submissions putforth by the learned APP lends support from the observations rendered in Narcotic Control Bureau Vs. Kashif (supra), wherein the Honourable Apex Court held that the lapse or delayed compliance of procedural irregularity with statutory provisions would not entitle the accused to be admitted to bail. As such, the applicant being a transporter cannot seek benefit of the same.

13. In the present case, the FIR indicates that 32 kgs 200 gms of opium was discovered. Similarly, the Certificate of Inventory issued under Section 52A(3) of the NDPS Act confirms that 4 bags were weighed and measured, all containing contraband. Consequently, the Inventory Certificate indicates that the accused were in possession of contraband.

14. There is prima facie evidence on record indicating green wet ganga. Consequently, at this stage, the offence appears to fall under Section 20(b) of the NDPS Act. Considering these circumstances, a prima facie case exists against the Applicants.

15. In view of the aforesaid observations and having regard to the gravity of the offence, I do not find merit in the present application and accordingly, both the bail applications are rejected.

(SACHIN S. DESHMUKH, J.)

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