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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 16 OF 2025

Rahul Kisan Gawali	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Kunal Aher, with Surbhi S. Agrawal, for the Applicant.
Ms. Sangeeta Shinde, APP for the Respondent-State.
Mr. Shriram Ghodake, API attached to Unit-9, DCB, CID, Mumbai,
present.

CORAM: R. M. JOSHI, J.
DATED: 10th APRIL, 2026.

PC:-

1. The Applicant seeks bail in connection with Crime No. 79 of 2023 (now Special Case No.764/2024) registered with Unit-IX, DCB CID, Mumbai for the offences punishable under Sections 8(c), 22(c), 29 and 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. In short, it is the case of the prosecution that on 14th October 2023, Police Inspector, Naik attached to DCB CID, received information from the Informer that the Applicant and the Co-accused would be coming to Khala Maidan, besides Smashanbhoomi, Carter Road, Khar Danda, Khar (West) to sell Mephedrone ('MD') to their customers. Information also revealed that they were arriving in a black colour car bearing No. MH-01-

BU-2913. The said information was communicated to the higher authorities. A raid was conducted. The Applicant came to be accosted along with the Co-accused. After compliance of the provisions of the NDPS Act, 2 Kilograms 540 grams of MD was seized from the Applicant. Panchanama was drawn in presence of pancha witnesses. Seized contraband was placed before the Magistrate in compliance of the provisions of Section 52A of the NDPS Act. On conclusion of investigation, the charge-sheet is filed.

3. Learned counsel for the Applicant submits that in this case, there is non-compliance of mandatory provision of Section 42 of the NDPS Act as the information received by the Officer has not been reduced into writing nor it was communicated to the immediate superior in compliance of Section 42(2) of the NDPS Act. He further argues that there is non-compliance of Section 50 of the NDPS Act in view of the option given by the officer of search in his presence too. To support his submission, he places reliance on the decision of the Supreme Court in *State of Himachal Pradesh v. Surat Singh*¹. It is further argument that in the instant case, there was delay in carrying out the inventory panchanama after the seizure of the contraband. To support the submission on that ground, he is entitled for bail, reference is made to the order of the Hon'ble Supreme Court in the case of *Rambabu v. State of Rajasthan & Anr.*². Finally, he argued that independent witnesses though available at the spot of the seizure, were not used, however, stock panchas were used. In order to support his

1 2026 INSC 240

2 Petition for Special Leave to Appeal (Crl.) No.5648/2025 with SLP (Crl) No.5732/2025 decided on 13.8.2025

submission that on these grounds, he is entitled for bail, reference is made to the order of the Delhi High Court in the case of ***Bantu v. State Government of NCT of Delhi***³. The said judgment is also referred in order to argue that there is no videography done of the seizure and therefore, this seizure would become illegal. To support this submission, reference is made to the order of the Delhi High Court in the case of ***Gulshan v. State Government of NCT of Delhi***⁴ and by Calcutta High Court in the case of ***Kalu Sk. @ Kuran and Kabir Sk. v. State of West Bengal***⁵. On these amongst other contentions, he seeks bail.

4. The learned APP opposes the Bail Application. Firstly, it is pointed out that the charge-sheet indicates that the information received was duly reduced into writing and was communicated to immediate superior. In this regard, she referred to the relevant documents in the charge-sheet. Apart from this, attention of the Court is drawn to the panchanama indicating that only two options, i.e., option of search before the Gazetted Officer and the Magistrate was given to the Accused unlike in the case of ***Surat Singh (Supra)***. It is pointed out that there is compliance of the provisions of Section 50 of the NDPS Act. As far as the delay in compliance of Section 52 of the NDPS Act is concerned, according to her, the same is explainable during the trial.

5. Before recording reasons, it needs to be mentioned that after the entire arguments were over and after hearing both sides, when this Court showed its disinclination to grant relief to the Applicant

3 2024 SCC OnLine Del 4671.

4 Bail Application No. 1289/2025 decided on 2.5.2025.

5 C.R.M.(NDPS) 492 of 2022 with C.R.M (NDPS) 493 of 2022.

and has started the dictation of the order, at this stage, the learned counsel for the Applicant tries to point out to the Court that Bail Application of the Co-accused is scheduled for hearing on 29th April 2026. No doubt, ordinarily, it is expected from the Court that if there are more than one applications pending in the same C.R., the Court is required to take up both the Applications or said Applications together. However, the intention of the learned counsel for the Applicant in making those submissions was to prevent this Court from passing the order rather than a *bonafide* attempt to tell the Court that Co-accused's Bail Application is pending. If it was so, it was expected from him that he would have mentioned the same at the beginning of his arguments. Once the Court after hearing both sides have disclosed that there is no case for bail, such submission cannot be entertained. Hence, this Court proceeds to pass further order.

6. Herein in this case, *prima-facie* perusal of the record indicates that the secret information was received by the Officer and he reduced the same into writing and communicated it to his immediate superior. Documentary evidence on record substantiates the said compliance of Section 42(1) and (2) of the NDPS Act.

7. Insofar as the compliance of Section 50 of the NDPS Act is concerned, the panchanama as well as the written notice under Section 50 of the NDPS Act given to the Applicant indicates that he was given only two options as to seek search in presence of Gazetted Officer or a Magistrate. No third option was given by the officer, who had taken the search of the Applicant. Thus, it cannot be said that there is non-compliance of Section 50 of the NDPS Act.

In respectful view of this Court for difference in the facts of the case, the judgment in the case of ***Surat Singh (Supra)*** has no application to the present case.

8. With regard to the delay in compliance of Section 52A of the NDPS Act is concerned, the Hon'ble Supreme Court in the case of ***Narcotics Control Bureau v. Kashif***⁶ has dealt with the said issue and has held as under which reads thus:

“39. (i)

(ii)

(iii)

(iv)

(v) *Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.”*

9. With regard to the allegation of use of stock panchas are concerned, it is not open for the High Court while dealing with the Bail Application to accept the contention of the Accused that the pancha witnesses are stock witnesses. Needless to say, that it is for the Trial Court to consider the evidentiary value of those pancha witnesses during the trial. Any observations made by the High

⁶(2024) 11 SCC 372

Court in this regard would amount to cause interference in the trial.

10. As far as the videography and photography of the search and seizure is concerned, first of all, the same cannot be equated with the mandatory compliance of Sections 42 or 50 of the NDPS Act in order to enable the Applicant to seek bail. Apart from the fact that there are panchanamas and *prima-facie*, evidence on record indicating search and seizure being conducted in due compliance of the provisions of the NDPS Act, for want of any such mandatory provisions, no benefit thereof could be given to the Applicant.

11. In view of the fact that this is a case of recovery of commercial quantity of contraband, which is supported by the C.A. Report, twin conditions are not complied with.

12. Having regard to the afore-stated discussion, the Applicant has not made out case for grant of bail.

13. The Bail Application stands dismissed and disposed of.

(R. M. JOSHI, J.)

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