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VASANT
ANANDRAO
IDHOL

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

CRIMINAL BAIL APPLICATION NO. 1101 OF 2025

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**ROHIT DILIP GUPTA
VERSUS
STATE OF MAHARASHTRA**

Mr. N. S. Bangar, Advocate for the Applicant
Mr. A. S. Gawai, APP for Respondent/State

**CORAM : R. M. JOSHI, J.
RESERVED ON :30TH MARCH, 2026
PRONOUNCED ON :6TH APRIL, 2026**

1. Applicant seeks regular bail in connection with CR No. 2/2024 registered with ANC Kandiwali Unit, Mumbai for the offences punishable under Sections 8(c), 20(c), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. It is the case of the prosecution in short that on 02.01.2024, while doing patrolling duty, the officer and patrolling party came across two persons in suspicious manner near Santhani Hospital at Sodawala Lane. It was found that they were waiting for someone. On suspicion, they were apprehended. After compliance of Section 50 of the NDPS Act, a search was conducted. From Accused No. 1, 2.5 Kg and from Accused No. 2, 460 gm of Charas was found. The samples were drawn under Section 52A of the Act

and the same were confirmed to CFSL Kalina. During Chemical Examination, the said samples were found to be the Narcotic Drug, Charas. On completion of investigation, charge-sheet came to be filed.

3. Applicant contends that there is a violation of Section 42(1) and 42(2) of the Act as the information/knowledge has not been recorded in writing and not communicated to the superior officer in 72 hours. It is also claimed that this is a case of non-compliance of Section 52A of the Act as the samples collected at the time of seizure itself and not taken before the Magistrate. It is claimed that the grounds of arrest are not communicated / furnished to the applicant in writing and as such, there is non-compliance of the order/judgment of the Hon'ble Supreme Court. It is also contended that if the weight of the bag is excluded, the contraband cannot be termed as commercial quantity in order to apply provisions of Section 37 of the Act.

4. Learned Counsel for the applicant submits that perusal of the charge-sheet raises doubt about the seizure. It is his contention that the panchanama records signatures of panchas twice on the labels i.e. four in all however, the labels indicate only two signatures. This according to him creates doubt with regard to the genuineness of the panchanama and consequent seizure. He further submits that it was mandatory for the officer to provide grounds of arrest to the applicant which are not communicated

herein this case. It is also claimed that the relatives and friends are also required to be communicated said ground of arrest which has not been done here in this case. In support of his submissions, he placed reliance on following judgments/orders :-

(i) Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID in Criminal Writ Petition No. 5552 of 2025, decided on 10.03.2026

(ii) Hanuman Choudhary Vs. The State of Maharashtra in Criminal Writ Petition (Stamp) No. 17755 of 2024, decided on 25.10.2024.

5. Learned APP submits that this is a case wherein Section 50 has been duly complied with. In respect of non-compliance of Section 52A of the Act, it is contended that it is a triable issue and does not become a ground for grant of bail. To support this submission reliance is placed on the judgment of the Hon'ble Supreme Court in case of ***Narcotics Control Bureau Vs. Kashif, MANU/SC/1384/2024***. With regard to the grounds of arrest, it is argued that the grounds of arrest are to be informed and not communicated as contemplated by the Cr.PC. Reference is made to Column No. 8 of the arrest panchanama which indicates that grounds of arrest were informed to the applicant. It is submitted that from the time of first remand till filing of the application for bail, applicant was duly represented by a lawyer and no grievance has been made with regard to non-communication of the grounds of arrest. It is contended that no prejudice is shown to have been caused to

the applicant on that count. It is further argued that having regard to the embargo created by Section 37 for grant of bail, this is not the case for enlargement of the applicant on bail. He placed reliance on judgment of Hon'ble Supreme Court in case of State of ***State of Karnataka Versus Sri Darshan Etc., 2025 SCC OnLine SC 1702.***

6. In rejoinder/response to the learned APP's submission, reference is made by learned counsel for applicant to the order passed by the Coordinate Bench in case of ***Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID*** (supra) wherein the Supreme Court judgment in case of ***State of Karnataka Versus Sri Darshan Etc.*** (supra) is duly taken into consideration and in spite of the said judgment bail came to be granted to accused.

7. Prima facie perusal of the record i.e. charge-sheet indicates that this is not a case wherein any specific information was received with regard to the applicant. Under general orders of preventing the sale and purchase of narcotic drugs, patrolling was done by ANC unit at Kandiwali. Two persons were found in suspicious circumstances near Santhani Hospital at Sodawala Lane, Boriwali (West). As suspicion was raised against them, panch witnesses were called. In presence of panch witnesses, notice was given to those persons under Section 50 of the Act apprising them of their right to seek search in

presence of Gazetted Officer or a Magistrate. A written notices to that effect was also given. The said persons recorded endorsement confirming that they were informed about their right of such search. They did not seek search before the Gazetted Officer or a Magistrate. The empowered officer therefore, conducted search of the said persons in presence of panch witnesses. From their possession charas weighing 2 kg and more was seized. The panchnama was prepared. Thus, *prima facie* there is compliance of Section 50 of the Act. Since, this is not the case of prior information, question of reducing the same in writing as contemplated by Section 42(1) of the Act does not arise. It is not the case that information of action has not been given to the immediate superior.

8. Insofar as compliance of Section 52A of the Act is concerned, there is sufficient material on record to indicate that the seized contraband was placed before the Magistrate along with the inventory note and Magistrate has certified the same in accordance with Section 52A of the Act.

9. It is sought to be argued on behalf of the applicant that there is inconsistency in the panchnama recording seizure of the contraband articles. It is contended that there is mention in the panchnama about panch witness signing the labels twice. Thus, it is argued that there must appear four signatures of panchas on labels, however, the photographs indicate only two

signatures of panchas. This was responded by the learned APP indicating that the possibility of typographical error being committed while recording panchanama cannot be ruled out.

10. At this stage, the question before this Court is to ascertain as to whether the panchanama was done in the presence of panch witnesses so also the seizure was done in accordance with the provisions of Act. Needless to say that in respect of search and seizure, the provisions of Cr.P.C. which are contrary to the provisions of the Act would have no application. In the instant case, there is prima facie material on record to indicate that the seizure articles were sealed in a packet and labels were affixed thereon under the signatures of panchas. Perusal of the photograph of said envelope indicates signatures of panchas on it. Needless to say that as per the practice followed of conducting of panchanama and seizure of article, there appears no reason/need for obtaining more than one signature of each panch on the same. This Court, therefore, finds no reason to discard the explanation sought to be given by learned APP that it could be a case of typographical error in the panchanama. It is therefore, prima facie held that it is sought to be raised by the applicant does not go to the root of the matter and in any case would not vitiate the trial. This observation, however, is made on prima facie

consideration of material on record and the same shall not bind parties or trial court during trial.

11. Insofar as the information of the ground of arrest is concerned, the reliance is sought to be placed on the judgments of the Hon'ble Supreme Court in case of *Vihaan Kumar Vs. State of Harayana, 2025 SCC OnLine SC 269*, *Prabir Purkayastha Vs. State (NCT of Delhi), (2024) 8 SCC 254*. A reference is also made to the judgment of Division Bench of this Court in case of *Hanuman Choudhary Vs. The State of Maharashtra in Criminal Writ Petition (Stamp) No. 17755 of 2024, decided on 25.10.2024*, wherein it is held that non communication of grounds of arrest to the accused is violation of fundamental right and statutory right of the applicant.

12. In this regard however, it is pertinent to note the Hon'ble Supreme Court in case of *State of Karnataka Versus Sri Darshan Etc.* (supra) which after considering all previous judgments on issue it is held as under:

“20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally (2024) 7 SCC 576 represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and

Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.”

13. After the passing of the order by the Division Bench of this Court, the Hon'ble Supreme Court has held that, unless prejudice is shown, even in case of lapses in providing of the grounds of arrest would not *ipso facto* entitle an accused to get bail.

14. Learned counsel for the applicant submits that Co-ordinate Bench of this Court in case of ***Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID in Criminal Writ Petition No. 5552 of 2025, decided on 10.03.2026***, has granted bail to the accused therein.

15. A perusal of the judgment in case of ***Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID*** (supra) shows that the judgment in case of ***State of Karnataka Versus Sri Darshan Etc.*** (supra) was taken into consideration however, it was held that in the facts and circumstances of the said case, the same does not assist the case of prosecution. The observations made in the said judgment more particularly in paragraph No. 16 indicates that in the said case, the arrest of the petitioners was done without issuing notice under Section 35(3) of BNSS, though it was warranted. Similarly, in the said case as observed in paragraph No.26, common grounds of arrest were

furnished to both petitioners and that they could not after satisfactory explanation of allegation. Thus, it cannot be said that the said judgment came to be passed by distinguishing the judgment of Hon'ble Supreme Court in case of *State of Karnataka Versus Sri Darshan Etc.* (supra), but it was passed considering difference in facts of both cases. Most importantly the judgment in case of *Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID* (supra) does not pertain to case under NDPS Act, whereas there are strict provisions for grant of bail under Section 37 of the NDPS Act, in case of commercial quantity of the contraband is seized from accused.

16. It would not be out of context to mention that the enactment of NDPS Act is aimed at taking effective steps against the sale and purchase of narcotic drugs and in trafficking. The legislation thought it necessary and appropriate to make provisions in respect of various procedural aspects of search, seizure, arrest etc. Similarly, contrary to the general principles applicable to the criminal trial special provisions are made such as Section 35, which provides for presumption of culpable mental state. Different provisions are made about the disposal of the seized contraband during pendency of trial. Moreover, Section 37 creates an embargo on the Court to grant bail unless it has reason to believe that accused is not guilty of offence and that he is not likely to commit same offence if enlarged on bail. Any lapse in providing

grounds of arrest therefrom would not enable the court to record that applicant is not guilty of offence much less he would not commit similar offence if granted bail.

17. In view of peculiarity of provisions of NDPS Act, this Court has no hesitation to hold by following the judgment of the Hon'ble Supreme Court in case of ***State of Karnataka Versus Sri Darshan Etc.*** (supra) that in absence of any prejudice being shown by the applicant to have been caused to him by non informing of grounds of arrest and also in view of the fact that applicant was duly represented by lawyer during remand as well as in the bail application before the trial Court, he is not entitled to enlarge on bail., Hence, there is no merit in the application, consequently application stands dismissed.

(R. M. JOSHI, J.)