

Navnath Waghmare (RA)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1514 OF 2025**

Paulinus Ndubueze Madu ...Applicant
Versus
The Union of India and Anr. ...Respondents

**Mr. Dilip Mishra a/w Mr. Ayaz Khan, Zehra Charnia, Mallika
Sharma for the Applicant.**
Mr. Hitendra J. Dedhia APP for the State
Ms. Megha Bajoria, SPP for the Union of India.

CORAM: R. M. JOSHI, J.

RESERVED ON 05th MARCH, 2026
PRONOUNCED ON 16th MARCH, 2026

JUDGEMNT:-

1. The Applicant seeks bail in connection with DRI F. No.. DRI/MZU/C/INT-25 of 2024 registered with Directorate of Revenue Intelligence, Mumbai Zonal Unit in Special Case No. 1898/2024, for the offence punishable under Section 67 of the Narcotic and Drugs Psychotropic Substances Act, 1985, (for short 'NDPS Act').

2. On 15.03.2024, specific intelligence gathered by Investigating Officer, an Indonesian National Ms. Gina Gantini Rahayu, who was landing on 16.03.2024 at CSMI Airport Mumbai, was suspected to carry Narcotic substance. This information received was reduced in writing and communicated to the Superior

Officer. A lady passenger was intercepted, who was carrying blue color trolley bag and beige coloured graffiti handbag with her. Along with panchas the team went to AIU camp for further proceeding. The said lady was appraised of her right under Section 50 of the NDPS Act, and nothing was found on her personal search. A search of trolley bag revealed a packet concealed in secret compartment of bag. The packet contained 5106 grams of cocaine. Net weight of cocaine of 4934 grams is found. The said packet was to be received by Aguodili Aloysius Nnamdi i.e. accused no.2.

3. Notice was issued to accused under Section 67 of the Act and her statement was recorded. On the basis of statement of accused no.1, trap was laid and accused no.2 came to be apprehended. As per his statement under Section 67, the packet was to be given to applicant for further distribution. On this information, applicant is apprehended. Nothing however could be seized from him. His statement was also recorded pursuant to statement under Section 67 of the Act.

4. On conclusion of investigation chargesheet is filed against the accused persons.

5. Learned counsel for the applicant submits that nothing has been recovered from the applicant in order to connect him with crime. According to her, except alleged statement made by accused no.2 u/s 67 of the Act, there is absolutely no material on record to

assume his complicity in the crime. She placed reliance on judgment of Hon'ble Supreme Court in case of State by **(NCB) Bangaluru vs. Pallulabid Ahad Arimutta and Anr.** 2022 (12) SCC 633 and **Bharat Chaudhary Vs. Union of India**, Appeal (CRL) No. 5703 of 2023 to submit that statement recorded under Section 67 of the said act would remain inadmissible in the trial as also would not be relevant. Reference is also made summons under Section 67 of the Act issued by Intelligence Office, and as of Supreme Court in case of **Harpreet Singh Talwar @ Kabir TALwar Vs. The State of Gujarat th. National Investigating Agency. SLP (CRL. No. 8878 of 2024).**

6. Learned counsel for the DRI opposed the application contending that in the present case, a commercial quantity of narcotic substance is seized from co-accused. According to her, this case is not solely based upon the statements under Section 67 of the Said Act, but there is evidence to connect the applicant with co-accused and ultimately to show his complicity in the crime. Respondent to judgment cited by counsel for the applicant it is contended that no doubt in judgment of *Tofan Singh*, it is held that statement of accused under Section 67 of the Act cannot become sole basis of conviction in the case in there is other material to hold involvement of applicant in the crime. It is further argued that this is a case of conspiracy between arrested accused and other unknown persons to facilitate illegal import of cocaine, indicating evidence on record about organising for transport and accommodation of accused no.1 by co-accused

7. *prima-facie*, perusal of record indicates that on 16.03.2024 cocaine weighing 4934 grams, which is a contraband of commercial quantity seized from the accused no.1 i.e. Ms. Gina. There is no recovery of any narcotic substance from present applicant. Now at this stage whether there is any evidence to connect applicant with the crime in question. As rightly argued by counsel for applicant relying upon judgment in the case of Hon'ble Supreme Court Tofan Singh and Pollulabid Ahmad Arimutta (supra) that statement of applicant under Section 67 of the Act, would remain inadmissible in the trial of offence under NDPS Act. The record, however, indicates that apart from statement of Applicant/Accused persons under said provision, there is evidence in form of mobile calls between applicant and co-accused, which are revealed from their mobile phones, seized under Panchanama in presence of Panch witnesses. There is further corroboration in the said evidence by statement of Mukesh Kumar.

8. Thus, it cannot be said that except statement of Applicant & co-accused recorded under Section 67 of the Act, there is no other evidence to connect applicant with crime in question. At this stage therefore, there is sufficient material on record to hold involvement of applicant in this crime. On the contrary in the judgment and order cited supra by counsel for applicant, in those cases there was no other material except the statements under Section 67 of the Act. In respectful view of this Court, the said judgment and order don't apply to the present case.

9. Since, a commercial quantity of contraband has been seized from co-accused and as there is *prima-facie* evidence to connect applicant with this crime, having regard to the presumptions under the Act and as this Court has no reason to believe that applicant is not guilty of charge.

10. On the above discussion, application stands dismissed.

(R. M. JOSHI, J.)