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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

CRIMINAL BAIL APPLICATION NO.2366 OF 2025

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Akil Nisar Matake

...Applicant

V/s.

State of Maharashtra

...Respondent

Ms.Ashwini Achari with Mr.Anish Pereira, Mr.Advait Tamhankar
and Mr.Taraq Sayed for the Applicant.

Ms.S.D. Shinde, APP for the State – Respondent.

Mr.Pramod Jagtap, PSI, Kalyan Railway Police Station is present
in Court.

CORAM : R.M. JOSHI, J.

DATE : 26TH MARCH, 2026.

P.C. :-

1. This Application is for regular bail in connection with
Crime No.1531 of 2024 registered with Kalyan Railway Police
Station, Kalyan, District Thane for the offences punishable under
Sections 8(c), 21(c), 22(c) and 29 of the NDPS Act.

2. It is the case of the prosecution that the present
Applicant and the co-accused were found in suspicious condition
at Kalyan Railway Station. Out of these two persons, one person

attempted to flee unsuccessfully. They were brought to police station. In presence of panch witnesses, search was conducted after issuance of notice to both of them under Section 50 of NDPS Act. Sample was taken at the time of conducting of the panchanama of search and seizure. Thereafter, the inventory was placed before the Magistrate for its approval. On conclusion of investigation, chargesheet came to be filed.

3. Learned counsel for the Applicant submits that under Section 42 of the NDPS Act, only the empowered officer is entitled to search the Applicant / accused. By drawing attention of the Court to the panchanama of search and seizure, it is argued that there is no mention wherein as to which officer has conducted the said search of the Applicant. Attention of the Court is drawn to the persons / police personnel present at the spot which included Police Naik Sarade. It is therefore, argued that it cannot be assumed that the empowered officer has conducted the search and seizure.

4. To support her submission, she placed reliance on :-

a). Bail Application No.3609 of 2024 dated 17th

March, 2025,

b). Bail Application No.5002 of 2024, dated 6th February, 2025,

c). Bail Application No.3318 of 2023, dated 29th February, 2024,

d). Bail Application No.2477 of 2023, dated 27th February, 2024,

e). Bail Application No.3158 of 2021, dated 7th February, 2023,

f). Bail Application No.1163 of 2022, dated 2nd January, 2023,

g). Bail Application No.378 of 2022, dated 23rd August, 2022,

h). Bail Application No.3033 of 2025, dated 16th October, 2025,

i). Bail Application No.2547 of 2023 @ 2387 of 2024, dated 18th November, 2024,

j). Bail Application No.3808 of 2022 @ 1292 of 2022, dated 2nd July, 2024,

k). The judgment of this Court in case of Dilkush G. Sinai vs. State of Goa, 1995 SCC OnLine Bom. 455 and

l). Oral judgment of the Panji Bench of this Court in Criminal Appeal No.9 of 1977, dated 6th November, 1997.

Apart from this, it is submitted by the Applicant that the samples were not drawn before the Magistrate and as the relevant Rules are come into effect from December, 2022, the same has application to the present case. The argument is also sought to be made that the samples were sent to CA on 9th September, 2024, whereas the same reached to FSL on 12th September, 2024 and therefore, serious question arises which is back to the custody of the said samples.

5. Learned APP opposed the application firstly on the ground that the Applicant has criminal history and has 14 offences against him. It is also contended that the offence in question is committed while there was a prohibition on the Applicant from entering the jurisdiction of the place where he was accosted. In this regard, reference is made to the order dated 18th December, 2023. In response to the submission of the learned counsel for the Applicant, it is argued that the tenure of the panchanama indicates that PSI Mr.Rane has conducted the search. This according to her is supported by the statement of Mr.Datta Namdas, Police personnel indicating that PSI Mr.Rane

conducted the search of the Applicant.

6. As far as the contention of the learned counsel for the Applicant with regard to the delay in sending of the samples to the CA, it is submitted that the samples are received by CA in sealed condition and therefore, at this stage, there is no reason to believe that this is a case of tampering.

7. There cannot be any dispute with regard to the proposition of law sought to be canvassed on behalf of the Applicant that only the empowered officer as contemplated under Section 42 of the NDPS Act is entitled to carry out search of any person. Here in this case, *prima-facie* perusal of the panchanama does not indicate the person who carried out the said search of the Applicant. No doubt, it is mentioned therein that the search was taken in presence of PI Mr.Chavan however, there is no specific mention with regard to the person who conducted the said search. In case all persons present there were empowered to conduct the search, probably in that situation, it may not be open for the accused to make any grievance in that regard. However, from the panchanama itself it

can be seen that Police Naik Mr.Sarade was present. Admittedly, Police Naik Mr.Sarade could not have taken the search being not empowered officer. In such circumstances non-mentioning of the person who conducted the search of the Applicant goes to the root of the legality or otherwise of the seizure at the instance of the Applicant. Once the legality of the search itself of the contraband is under the cloud of doubt, the benefit of the same must be given to the Applicant / accused.

8. Since the Applicant is entitled to seek bail on this ground alone, no findings are recorded in respect of other arguments.

9. Keeping in mind the fact that the Applicant has criminal history and he said to have committed offences while under the prohibitory order of externment, prima-facie once the Court finds doubt with regard to the legality of the seizure done of the alleged contraband appears from him,he deserves bail. However, in view of the criminal antecedents against him, stricter conditions are required to be imposed against him. Hence the following order :-

ORDER:

- a). The Application stands allowed.
- b). The Applicant be enlarged on bail in connection with Crime No.1531 of 2024 registered with Kalyan Railway Police Station, Kalyan, District Thane on furnishing PR bond of Rs.1,00,00/- with one or two sureties in the like amount to the satisfaction of the Trial Court.
- c). The Applicant is directed to attend the concerned police station once in a month i.e. on the first day of each month till the conclusion of the trial.
- d). The Applicant not to cause interference in the evidence of prosecution in any manner whatsoever.
- e). It is clarified that above observations are *prima-facie* in nature and would not bind Trial Court / parties during trial.

(R.M. JOSHI, J.)