

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3004 OF 2025

Imran Jahurul Kha	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Khan Sherali Shakhbqul for the Applicant.
Ms. Rajeshree Newton APP for the Respondent-State
Mr. Nitin Bhosale, PSI, DCB CID Unit-4 Mumbai

CORAM: R. M. JOSHI, J.

DATED: 04th MARCH, 2026

PC:-

1. The Applicant seeks bail in connection with CR No. 81 of 2025 registered with DCB/CID Unit IV, Mumbai for the offence punishable under section 8(C) r/w 20 (C) Narcotic Drugs and psychotropic Substance act, 1985 (for short '**NDPS ACT**')

2. It is the case of the prosecution that on 02.12.2024 Police DCB/CID received information that the applicant is conscious possession of huge quantity of 'Ganja' which was meant for sale to the people. On the basis of secret information, police along with panch witnesses went Jacob circle, Sath Rasta, Mumbai. At that time it was found that applicant accused was transferring 'Ganja'

from white coloured plastic gunny bags in his house. In the presence of panch witnesses 38.117 kg. of Ganja worth Rs.9,52,925/- and also cash was seized from the house of the accused. He was arrested on 03.12.2024 and since then he is in jail.

3. Learned counsel for the applicant submits that there is non-compliance of Section 42 of the said Act since the person who received the secret information have not reduced the same and thereafter communicating the same to the Superior Officer. By drawing attention of the Court paragraph 12 of the order passed by the Trial Court rejecting the application, it is contended that the finding recorded by the Trial Court with regard to the Kishor Mahajan recorded the secret information received by him in police station diary and then informed it to incharge P.I., is factually incorrect. He submits that the provision of Section 42 is mandatory in nature and non-compliance thereof could even be considered at the stage of bail. To support this submission he placed reliance on the order dated 13.06.2017 passed by this Court in Bail Appliation No. 2108 of 2016, and reference is also made to the judgment of the Apex Court in case of *Sarija Banu (A) Janarthani Vs. State through Inspector of Police {(2004) 12 SCC 266}*.

4. Learned APP opposed the application essentially on the ground that the quantity of contraband involved in this case, is commercial quantity. It is her submission that the issue with regard to the breach of Section 42(2) cannot be decided at this stage, and

it is a matter to be considered at the time trial. She further drew attention of the court to the statement recorded during the course of investigation which according to her indicates that after the receipt of the information from the same was communicated to the senior officers and as such there is compliance of Section 42 of the Act. It is also pointed out that there is another offence registered against the applicant vide CR No. 47 of 2025 on 23.05.2025

5. The Hon'ble Supreme Court in the case of *Sarija Banu (supra)* has considered as to whether violation of Section 42 of the NDPS Act could be taken into account while deciding the bail application. It is held therein that compliance of Section 42 is mandatory and it is relevant fact to which attention of the court can be drawn, while considering the bail application. This Court in bail application No. 2108 of 2016 has also taken into consideration the relevant provision of Section 42 and it is held that the non-compliance of the said provision would entitle the accused to seek bail.

6. Perusal of the chargesheet indicates that the secret information was received by Police Hawaldar Kishor Mahajan. Though it is so stated there is *prima-facie* no evidence on record to indicate that the said information was reduced in writing and thereafter, it was communicated to the superior officers. This Court therefore finds *prima-facie* substance in the contention of the counsel for the applicant with regard to the compliance of Section 42 of the said Act. In so far as the antecedents is concerned,

admittedly the Applicant is in jail since 03.12.2024 and in such circumstances there is no question of he going to someones office and committing offence. On the face of it, the said allegation does not deserve acceptance.

7. Thus, it can be said that there is no criminal history behind the applicant and he is not likely to flee from justice. There is no chance of conclusion of trial in short period of time. Since the case is made out for non-compliance of Section 42 of the said Act, this is a fit case for enlargement of applicant on bail.

8. Hence, following order.

ORDER

- i) The application stands allowed.
- ii) Applicant is enlarged on bail in connection CR. No. 81 of 2024 Applicant be enlarged on bail on furnishing PR Bond of Rs. 30,000/- with one or two for the satisfaction of the trial court.
- iii) Applicant is directed to attain before the DCB/CID Unit-IV, Police Station Mumbai, once in a month till conclusion of the trial. He is further directed to cause appearance on each date of hearing before the trial Court unless exempted by passing specific order.

(R. M. JOSHI, J.)