

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3308 OF 2025

Hanoj Hoshi Engineer ... Applicant

versus

State Of Maharashtra ... Respondent

Mr. Anil G. Lalla a/w. Mr. Yash S. Pulekar and Mr. Rushil Alag, Advocates
for Applicant.

Mr. B. B. Kulkarni, APP for the Respondent – State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th APRIL, 2026.

P.C. :

1. By this application, the applicant is seeking regular bail in C.R.No. 186 of 2024 in NDPS Special Case No. 207 of 2024, registered with State Excise Department, Panvel, for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

2. It is prosecution's case that on 12.06.2024, police apprehended original accused No.1 and 2 in Mahindra XUV 500 vehicle near Panvel and recovered 414 kg Ganja from said vehicle. On 15.06.2024, police apprehended the applicant and co-accused Shri. Umbre in Toyota Innova car and recovered 135 kg of Ganja.

3. It is contention of learned counsel for the applicant that Section 42 of NDPS Act was not complied, as information was not reduced into

S.S.Kilaje

writing after receipt of information. The applicant is behind bars for about two years and requested to allow the application.

4. It is contention of learned APP that the information was reduced in writing in the station diary and information was given to the Senior Officer. Accordingly, the Senior Officer was present when information was reduced in writing in the station diary. If the applicant is released on bail, he may abscond or threaten prosecution witnesses. Hence, requested to reject the application.

5. I have heard both the learned counsel. Perused charge-sheet and documents produced on record. Admittedly, Section 42 of NDPS Act reads as under :

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—

- (1) *Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset, -*
- (a) enter into and search any such building, conveyance or place;*

S.S.Kilaje

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector]

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

- (2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."*

This Section provides that when any information is received, it must be reduced in writing and copy of it must be sent to the concerned Senior Officer. The writing of information in station diary cannot be considered as compliance of Section 42 of NDPS Act and no information was given to the Senior Officer as contemplated under the said Act. Considering the fact that the provisions of Section 42 of NDPS Act are not followed in the present case, I pass following order.

ORDER

- i. The applicant be enlarged on bail in C.R.No. 186 of

S.S.Kilaje

2024 in NDPS Special Case No. 207 of 2024, registered with State Excise Department, Panvel, on executing P.R.Bond of Rs. 30,000/- on furnishing one or two sureties in the like amount.

- ii. The applicant shall attend the concerned police station as and when required.
- iii. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- iv. The Director General of Police shall appoint a suitable officer to conduct the enquiry against the Investigating Officer.

6. The application is allowed in the aforesaid terms and is accordingly disposed of. All pending applications, if any, disposed of.

7. It is made clear that the above observations are made only for the purpose of granting bail and the Trial Court shall decide the case on its own merits in accordance with law and uninfluenced by the observations made in this order.

8. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)