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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

CRIMINAL BAIL APPLICATION NO.3637 OF 2025

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Shahrukh Nazir Shaikh

...Applicant

V/s.

State of Maharashtra

...Respondent

Ms.Ashwini Achari with Mr.Taraq Sayed, Mr.Anish Pereira and
Aryan Kotwal for the Applicant.

Mr.Mayur Sonavane, APP for the State – Respondent.

Mr.R.R. Nikam, PSI attached to ANC Crime Branch, Thane is
present in Court.

CORAM : R.M. JOSHI, J.

DATE : 29TH APRIL, 2026.

P.C. :-

1. The Applicant seeks bail in connection with Crime
No.325 of 2023 registered with Daighar Police Station for the
offences punishable under Sections 8(c), 22(c) and 29 of the
Narcotic Drugs & Psychotropic Substances Act, (NDPS Act) with
Sections 18(c), 18(a), 27(b) and 28(a) of the Drugs and
Cosmetic Act.

2. In short, it is the case of the prosecution that at the first instance, accused No.1 came to be accosted and from his premises 19 Omerex TM Cough Syrup Bottles were seized. It is further the case of the prosecution that on the basis of the information received from accused No.1, the involvement of the Applicant was found in the crime. Pursuant to the said information, the place of the Applicant was raided wherein 53 bottles of Omerex TM Cough Syrup were seized. Further compliances were done under the NDPS Act. Chargesheet came to be filed.

3. Learned counsel for the Applicant amongst other contentions submits that this is the case wherein there is non-compliance of the mandatory provisions of Sections 42(1) and 42(2) of the NDPS Act. It is her submission that in case the said provision is not complied, the recovery / seizure at the instance of the Applicant would be negated.

4. Learned APP opposed the application by contending that there is partial compliance of Section 42 of the NDPS Act. To support this submission, he places reliance on the General

Diary Entry dated 15th January, 2023 indicating that the said information has been reduced in writing. Similarly, another entry of the same day recorded at 15:15 hours is referred to in order to claim that after the conducting of the raid, entry was taken and the same was duly informed to the Superior Officers. To support his contention, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Karnail Singh vs. State of Harayana, (2009) SCC 539** and referred to paragraph 35 thereof.

5. In order to appreciate the submissions of both sides, it would be relevant to take note of the said paragraph, which reads thus :-

“35. In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajjan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move

either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the Information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

6. The above observations clearly indicate that the compliance of Sections 42(1) and 42 (2) of the NDPS Act is mandatory in nature. The Hon'ble Supreme Court has dealt with the situations in which it would not be possible for the officer receiving such information to reduce the same in writing, in such situation an exception is made for reduction of the said information in writing forthwith, however, the compliance of Section 42(2) of the NDPS Act is still held to be mandatory.

7. Reverting back to the facts of the present case, admittedly, the involvement of the present Applicant is revealed in the crime on the basis of the statement made by the co-accused i.e. accused No.1. The law on the point is fairly settled to say that the information from the co-accused also amounts to an information received in respect of the another accused which would attract the provisions of Section 42 of the NDPS Act. Thus this Court has to prima-facie see as to whether there is compliance of the said provision in the instant case.

8. Perusal of the General Diary Entry dated 15th August, 2023 does not indicate that the information received from

accused No.1 was reduced in writing by the officer who received it. Here in this case, the prosecution does not claim that the said information was received when the co-accused i.e. accused No.1 was accosted or when the officer concerned was not present in police station. The co-accused is accosted on 10th August, 2023, whereas the raid has been conducted on the present Applicant on 15th August 2023. This shows that in any case there could not be any excuse available to the officer for not reducing the said information in writing. The present case therefore is not covered by exception, carved out in **Karnail Singh** (supra). Moreover, the said information has not been communicated to the immediate superior in compliance of Section 42(2) of the NDPS Act. Thus, *prima-facie* this is a case of non-compliance of Section 42 of the NDPS Act, which is mandatory in nature.

9. Needless to say that non-compliance of the said mandatory provision may affect the genuineness / correctness of the recovery of the contraband. Having regard to the aforestated facts, the embargo of Section 37 of the NDPS Act may not apply to the present case. The Applicant has no criminal history behind

him. If he is enlarged on bail, he is not likely to commit the similar crime. Hence the following order :-

ORDER:

- i. Application stands allowed.
 - ii. The applicant shall be released on bail in No.325 of 2023 registered with Daighar Police Station on furnishing P.R. Bond of Rs. 30,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
 - iii. The applicant to attend the Trial Court on each dates of hearing unless exempted by the Trial Court.
 - iv. The Applicant not to contact any witness directly or indirectly and not to interfere with the evidence of prosecution in any manner whatsoever.
9. It is clarified that above observations are *prima-facie* in nature and would not bind Trial Court / parties during trial.

(R.M. JOSHI, J.)