

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4160 OF 2025

Akash Dilip Chavan

.... Applicant

Versus

State Of Maharashtra

....Respondent

Mr. Rajhuns Rajkumarlaxman, for the Applicant.

Mrs. S.D. Shinde, APP for the Respondent-State.

CORAM : R.M. JOSHI, J.

PC. :-

Date : 26th MARCH, 2026

1. By this Application, the Applicant seeks his enlargement on bail in connection with *C. R. No. 44 of 2024*, registered with ANC Bandra Unit, Mumbai, for the offences punishable under Sections *8(b)*, *8(c)*, *20(a)*, *20(c)*, and *29* of the NDPS Act, 1985.

2. It's the case of the prosecution that on 15/08/2024, the Applicant was found present near a Volkswagen car bearing registration No. MH-06-BE-5314 in suspicious circumstances. It is alleged that upon search being conducted in presence of punch witnesses 4 sacks containing 47 kg 860 grams of Ganja was recovered. The said contraband was found inside the vehicle, and

during the personal search of the Applicant, only a mobile phone was recovered. No contraband was found on the person of the Applicant.

3. The Applicant came to be arrested on the basis of the said recovery. During investigation, it is alleged that the Applicant disclosed the involvement of two other persons, namely Kiran Ramchandra Koli and Shinu Sheikh, who are stated to be absconding. The investigation against both the alleged co-accused is still on-going and charge-sheet came to be filed against the present Applicant, and he is presently in judicial custody.
4. The learned counsel for the Applicant submits that the copy of punchanama is not provided and there is non compliance of section 50(2) of the act resulting into failure on part of the officer empowered to appraise the applicant/accused of his rights. He also submits that there is non-compliance of section 42(2) which can vitiate Trial and a case for bail is made out for non abiding of its procedure. He states that there is non compliance of section 52A of the act as prescribed procedure not followed properly. He further states that the recovery shown is planted one so also punchanama is done not following proper procedure and the name of the recipients to whom contraband was to be delivered

by the present applicant/accused is not disclosed. It's further contended that contraband was not recovered from applicants' conscious possession and independent seizures witnesses have not supported the case of prosecution. He further argued that the articles allegedly seized is not 'ganja' as defined by section 2(iii) (b) of the Act. He also challenged the action of prosecution for non compliance of section 52A of the Act.

5. The learned APP submitted that the entire process of raid, search and seizure had been video recorded. It is submitted that the contraband is "ganja" as understood under Section 2(iii)(b) of the NDPS Act. . It submitted that this substance therefore cannot be said to be only the leaves of the cannabis plant. He pointed out that the CA report categorically mentioned the description of exhibit *(1), (2), (3), (4)* which is forwarded in the sample packets to CA to be contraband ganja. He submitted that evidence is concrete, cogent and reliable. He places reliance upon the judgment of Hon'ble Supreme Court in case of ***SHIV KUMAR MISHRA vs STATE OF GOA, (2009) 3 SCC 797***, to substantiate that seized ganja would include seeds and leaves of cannabis plant in terms of definition of "ganja". By pointing out punchnama he contends that the contraband is recovered at the

instance of the Applicant/Accused as he opened the trunk of the car from where contraband came to be seized and which indicates conscious possession of applicant with contraband. He also states that this is not the case wherein any prior information was received by the concerned officer with regards to the applicant possessing said contraband articles. It's further pointed out that there is notice given under section 50 of the Act, appraising the applicant of his right to be searched in presence of a Gazetted Officer or a Magistrate has been duly communicated and since the applicant denied to be searched by the said authorities, there is no impediment in the compliance of section 50 of the act. It is further argued that punchnama of seizure has been drawn on due compliance of provision of the Act.

6. There cannot be any dispute made with regard to the fact that Section 50 of the Act is mandatory in nature and it is obligation of the concerned Officer or empowered Officer to apprise the person who is to be searched of his right to get searched in presence of Gazetted Officer or a Magistrate. The Hon'ble Supreme Court in case of ***Ranjan Kumar Chadha vs State of Himachal Pradesh, 2024 All SCR (Cri) 127***, while referring to the judgment of Constitutional Bench has held that before

conducting search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally that suspect has right of being searched in presence of Gazetted Officer or a Magistrate. Here in this case apart from mention in the search panchnama, there is evidence of such communication being made in writing to the Applicant. Applicant abjured his rights and chose to be searched by police officer empowered to conduct search.

7. In so far as compliance of Section 42 of the Act is concerned, it is appearing prima facie from the record that this is not the case of prior information to the concerned Officer with regard to the Applicant carrying narcotic substance, but a “chance recovery”. It is on the spot that the applicant was found in suspicious circumstances and was intercepted. At this stage, his personal search was taken after giving him notice under section 50 of the Act. On his person, only a mobile phone from his left pocket was seized. From the trunk of the vehicle which he stated to belong to him in presence of panchas, 4 sacks containing a total of 47 kg 860 grams of contraband articles came to be seized and the accused himself identified it as “ganja” and stated to be used for sale. This indicates that the applicant has nexus with the

vehicle in question from which commercial quantity of contraband came to be seized, so also further investigation was made and it was established that the vehicle seized was registered in the name of Dilip Chavan i.e. father of applicant.

8. With regards to the role of the accused, the perusal of chargesheet indicates that ganja was delivered to him by co-accused(absconding) Shinu Sheikh from Visakhapatnam and states to have purchased contraband from co-accused(absconding) Kiran Kohli from Shirpur. On 07/11/2024 another raid in Shirpur, Dhule was conducted, the police located the illegal plantation and approximately 1.5 acres were dedicated to Ganja plants and another 2.5 acres of plantation was dispersed within cotton crops in order to hide them. 2,774 kg of wet Ganja plants and 42.5 kg of dried Ganja came to be seized and co-accused Kiran Koli was declared as wanted accused. Prima facie therefore there is reason to believe that the present applicant is involved in large scale operation of ganja plantation along with other absconding co-accused.

9. On the point of non compliance of section 52A of the Act with regards to prescribed procedure being not followed properly

is concerned, Section 54 of the NDPS Act can be made reference to as it permits the Court to draw a presumption that the accused has committed an offence under the Act if he is found in possession of any narcotic drug or psychotropic substance and fails to satisfactorily account for such possession. This presumption operates unless and until it is rebutted by the accused during the course of trial.

10. Thus, where possession of contraband is established and no satisfactory explanation is offered, a prima facie inference arises against the accused. In such circumstances, it would lead to a bizarre situation if mere non-compliance or delayed compliance of Section 52A is treated as sufficient to vitiate the trial or to grant bail, despite the existence of such statutory presumption. Such an interpretation would defeat the legislative intent underlying the Act. Also, reference can be made to judgment of Hon'ble Supreme Court in case of ***NCB vs Kashif, (2024) 11 SCC 372***, wherein discussion on the above point is summarised by Hon'ble Supreme Court as under:

"50. The upshot of the above discussion may be summarized as under:

50.1 The provisions of NDPS Act are required to be interpreted keeping in mind the scheme,

object, and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose, and Preamble of the Act.

50.2 While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

50.3 The purpose of insertion of Section 52A, laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

50.4 Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity, which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

50.5 Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

50.6 Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other

circumstances and the other primary evidence collected during the course of investigation, also the statutory presumption permissible under Section 54 of the NDPS Act.”

11. Having regard to the stringent provisions contained in Section 37 of the Act, it is well settled that bail can be granted only where there is prima facie material indicating non-compliance with mandatory provisions of the Act of such a nature as would vitiate the seizure itself. Mere irregularities or procedural lapses, capable of being explained by the prosecution during trial, would not suffice to satisfy the twin conditions prescribed under Section 37 of the Act.

12. In the present case, no such violation of the core or mandatory provisions of the Act is demonstrated which would render the seizure illegal or vitiate the prosecution case at this stage. Consequently, this Court is unable to record a satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of the alleged offence or that he is not likely to commit any offence while on bail. In view thereof, this Court finds no justification to exercise discretion in favour of the Applicant. The Bail Application, therefore, stands rejected.

(R.M. JOSHI, J.)