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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

CRIMINAL BAIL APPLICATION NO.4294 OF 2025

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Date: 2026.03.24
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Junaid Shibali Ali

...Applicant

V/s.

State of Maharashtra

...Respondent

Mr.Taraq Sayed with Anish Pereira, Ashwini Achari i/b Jayant Bardeskar for the Applicant.

Ms.Veera Shinde, APP for the State – Respondent.

Mr.G.N. Pote, HC 3129 attached to Kalyan Crime Branch, Thane present.

CORAM : R.M. JOSHI, J.

DATE : 18TH MARCH, 2026.

P.C. :-

1. Applicant has filed this application under Section 483 of BNSS seeking bail in connection with Crime No. 785/2024 registered with Dombivali police station for the offences punishable under Sections 20, 29, 8(C) of Narcotic Drugs and Psychotropic Substances Act (for short “NDPS Act”).

2. It is the case of the prosecution that on 06.08.2024,

police officer received information that near Sky Walk of Dombivali Station, one person is going to come to sell narcotic substance. On the basis of said information, the police officers went to the spot and laid a trap. One person came in a suspicious manner and was waiting near the wall of the building and informant pointed out towards said person to be the same person who is there for selling narcotic substance. The informant thereafter left the spot. One police personnel was asked to keep an eye on the said suspicious person and rest of the unit went to the office. Permission was sought from the superior for the raid however, without waiting for the written order, on oral direction, the concerned police went to the spot. Panchas were called. In the presence of panchas, notice under Section 50 of the Act was given to the said person. He refused to have search in presence of any Gazetted Officer or a Magistrate. His signature was obtained on the said notice. During his personal search, two mobile phones were found and in a bag carried by him, contraband Charas, weighing about 1.18 kg was found. Since involvement of the Applicant was found in the

offence under NDPS Act, First Information Report came to be lodged with the concerned police station. After conclusion of investigation, charge-sheet has been filed.

3. Learned Counsel for the Applicant submits that prima facie perusal of the record and the evidence collected during the investigation does not indicate any offence has been committed by the Applicant. He submits that the said inference is inevitable in view of the record available before the Court. It is submitted that in the charge-sheet filed before the competent Court, it is claimed that the Applicant was in possession of 63 grams of Charas. It is further pointed out that even in the first informal report there is such a mention however, it was scored off and the same is replaced by another figure. Apart from this, it is argued that in this case, there is non-compliance of Section 42(2) of the Act. In this regard, it is submitted that there is absolutely no material on record to show that the officer who received the said information reduced it in writing and the same was communicated to the senior officer. It is further argued that there is non-compliance of Section 52 of the Act which is

mandatory in nature. In order to support the said submission, it is pointed out that on notice under Section 50 of the Act, allegedly given to the Applicant, there are no signatures of panch witnesses. It is further argued that except for the alleged signature, there is no mention that the Applicant refused to undertake the search in presence of a Gazetted Officer or a Magistrate. In this backdrop, it is claimed that after filing of the charge-sheet on 01.02.2025, the trial has not commenced and is not likely to get over in a reasonable period of time. It is submitted that the Applicant is arrested on 06.08.2024 and since then is in jail. On these amongst other contentions, bail is sought.

4. Learned APP opposed the application firstly on the ground that here in this case, huge quantity of over 1 Kg of Charas has been recovered at the instance of the Applicant. It is thus contended that since this is a commercial quantity, rigours of Section 37 of the Act would apply. It is further argued that having regard to the time at which the information was received and the time required for laying the trap, it was not possible to

seek any written permission of the superior authority and hence the circumstances thus justify the action of the police officer.

5. At this stage, this Court is required to consider as to whether the prima facie material on record in the charge-sheet would be sufficient to accept the possibility of the accused having committed the crime exists and also that there is a possibility of commission of any similar offence by the Applicant, if enlarged on bail. There cannot be any dispute made with regard to the fact that the secret information was received in respect of a person coming near Dombivali railway station for selling narcotic substance. In this backdrop, Section 42 of the Act requires such information to be reduced in writing by the person who received it and its communication is mandatory within a period of 72 hours to the superior officer. Here in this case, prima facie, charge-sheet does not indicate that the information which was received was reduced in writing by the concerned officer. It is necessary to take note of the fact that learned APP had sought time to point out recording of such information by the concerned officer. However, inspite of

granting sufficient opportunity, the learned APP was not able to point of anything which would indicate compliance of Section 42 of the Act.

6. At this stage, it would be relevant to take note of judgment of Hon'ble Supreme Court in case of *Sarija Banu vs. State, 2004 AIR (SCW) 7488*, wherein it is observed in paragraph No. 7 as under :-

“7. It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of Section 42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance of Section 42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application. In the aforesaid circumstances having regard to the special facts of the case, we direct that the appellants 1 and 2 be released on bail on executing a bail bond for Rs. 50,000 each with two solvent sureties for the like amount to the satisfaction of the Special Judge, EC/NDPS, Madurai on the following conditions:

(1) The counsel for the appellants requested that the appellants may be allowed to stay outside the State of Tamil Nadu. We are not inclined to grant such a prayer as the respondents police authorities would not be able to ensure the timely presence of the appellants in Court;

(2) The appellants shall not leave

jurisdiction of the District Court, Madurai and shall report before the Circle Inspector, Karuppayurani Police Station once in two weeks for 3 months, thereafter, once in a month.

(3) The appellants shall surrender their pass-port before the Court, if not already seized by the police.

The Special Judge is directed to expedite the trial.

Whatever the statement made regarding the merits of the case shall not have any persuasive effect on the Special Judge while finally deciding the case.”

7. There cannot be any dispute with regard to the position of law that Section 42 of the Act is mandatory and the compliance thereof is relevant consideration even at the stage of bail. Hon’ble Supreme Court in case of *Kannil Singh vs. State of Haryana, (2009) 8 SCC 539*, has held that the officer on receiving the information of the nature referred to sub-section (1) of Section 42 from any person had to record it in writing in the concerned register and forthwith sent copy of this to immediate superior officer before proceeding to take action in terms of Clauses (A) and (D) of Section 42(1) of the Act. It is only in case the information is received while the officer is not

present in the police station but while he was on move either on patrol duty or otherwise, an 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 the information in writing as given to him. In such situation, he could take action as per Clauses (A) and (D) of Section 42(1) and thereafter since it is practical record the information in writing and forthwith inform the same to the officer superior. In the instant case, the information has not been received when the officer concerned was on move. The information is received when the officer was in the police station. Thus, nothing prohibited the concerned officer to record said information in writing in the concerned register and it was not communicated by him to the officer superior. Since the learned APP was unable to point out anything from record indicating reducing of such information in writing, this Court finds present case to be one of non-compliance of Section 42 of the Act.

8. So for as compliance of Section 50 of the Act is

concerned, the notice though indicates that the Applicant was apprised of his right to seek search in presence of a Gazette Officer or a Magistrate, prima facie perusal of the said notice does not indicate any signature of the panch witnesses. Apart from this, there is only signature appearing of the accused on the said notice. It is therefore, not clear at this stage as to whether the Applicant has refused to exercise his option to seek such search before a Gazetted Officer or a Magistrate, on being apprise of right to do so.

9. One more aspect requires consideration at this stage is that the panchanama does not indicate that the person when he was pointed out by the informant to be the one who had brought narcotic substance for sell was having/holding any bag with him. It is at the subsequent stage after his personal search was done and nothing was found therein except two mobile phones, a reference in respect of the bag is made in the panchanama. Without recording any finding on this aspect as the same would be a matter of trial, suffice it to say that at this stage, reasonable doubt has been created by the defence into the case of the

prosecution.

10. Having regard to the prima facie perusal of the charge-sheet and the contention on behalf of the Applicant regard to the non-compliance of Section 42(2) so also Section 50 of the Act, this Court has reason to believe that the Applicant may not have committed the crime in question. There are no criminal antecedents against the Applicant and hence it cannot be held that he is likely to commit similar crime if enlarged on bail. Applicant has been arrested on 06.08.2024 and since then he is in jail. Though charge-sheet has been filed almost a year back, there is no possibility of conclusion of trial within a reasonable/short period of time. Having regard to these facts, this Court finds it to be a fit case for enlargement of the Applicant on bail. Hence the order :-

ORDER:

- (i) Application is allowed.
- (ii) In connection with Crime No. 785/2024 registered with Dombivali police station for the offences punishable under Sections 20, 29, 8(C) of NDPS Act, the Applicant be enlarged on

bail on furnishing PR bond of Rs. 30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount to the satisfaction of the Court.

(iii) The Applicant is directed to attend the concerned police station once in a month i.e. on first day of each month between 11.00 am to 1.00 pm till conclusion of the trial.

(iv) The Applicant shall attend all dates of hearing before the Trial Court except exempted by the Court by passing specific order. It is clarified that above observations are *prima-facie* in nature and would not bind Trial Court / parties during trial.

(v) All pending applications stand disposed of.

(R.M. JOSHI, J.)