



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [B.A.] NO. 1161 OF 2025

Bhaiyyaji Mahadeo Kulmethe

-- VERSUS --

State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Ashish R. Fule, Advocate a/w. Ms. Alka D. Agarwal,
Advocate for the Applicant.

Ms. S.Z. Haider, A.P.P. for the Non-applicant/State.

CORAM : M.M. NERLIKAR, J.

DATE : FEBRUARY 11, 2026.

Heard.

2. The present application is filed seeking regular bail in Crime No.53/2024 for the offence punishable under Sections 8(c), 20(a), 20(b)(ii), of the Narcotic Drugs and Psychotropic Substances, Act, 1985, (NDPS), registered with Police Station Aheri, District Gadchiroli.

3. The informant, who was serving as Police Sub-Inspector, received information on 27/02/2024 that the accused, Bhaiyyaji Mahadev Kulmethe, had allegedly cultivated cannabis (ganja) in his agricultural field and was in possession of the same. Acting upon the said information and directions of superior officers, a raiding party along

with panch witnesses proceeded to the spot. It is alleged that during the search of the field, 15 cannabis plants of approximately 5½ to 6½ feet in height were found growing amongst other crops. The plants were uprooted and weighed, and the total weight was found to be 45.500 kilograms, out of which samples were drawn for chemical analysis and the remaining material was sealed. Further, during the search of the house of the accused, 1.800 kilograms of dried cannabis (ganja) was allegedly recovered and seized after drawing samples. Based on this information, F.I.R was lodged.

4. The learned counsel appearing for the applicant submits that the charge-sheet was filed without Forensic Science Laboratory (for short, "FSL") Report. He further submits that in order to defeat the right provided under Section 167(2) of the Cr.P.C, charge-sheet was hurriedly filed, without there being, any C.A. report, and therefore, he submits that without going into the merits of the matter, the Supreme Court in the case of *Jabir Kha VS State of Madhya Pradesh, (Criminal Appeal No.2088/2025)* has considered the very issue and has granted regular bail to the appellant therein. He has also invited my attention to the order of High Court of Madhya Pradesh, at Indore, from which case, the S.L.P was preferred by Jabir Kha. He further submits that the

issue is still pending before the Larger Bench of the Supreme Court, for considering whether, a charge-sheet without the FSL/Examiner's Report in a NDPS case can be termed as an 'incomplete Report' under Section 173 of Cr.PC. He submits that there are divergent views of different High Courts, and therefore, the matter was referred by Supreme Court to the Larger Bench and now it is under consideration. However, he further submits that during pendency of the issue, the Supreme Court has granted interim bail to the petitioners therein which is to operate until further orders, and therefore, he submits that even in the present case also, the FSL report was not part and parcel of the charge-sheet, however, it was filed on 16/07/2024, whereas, the charge-sheet was filed on 25/04/2024, therefore, he prayed to allow the application.

5. On the other hand, the learned A.P.P. vehemently opposes the application and submits that there are serious allegations against the present applicant as he was cultivating cannabis (ganja) in his field, the field is owned by his father. She further submits that considering the allegations, the applicant does not deserve to be enlarged on bail. The contraband is of commercial quantity and rigours of Section 37 of NDPS would be applicable.

6. Upon consideration of the rival submissions, admittedly, it appears from various orders that there are conflicting views of different High Courts, and therefore, the Supreme Court in the case of *Mohd. Arbaz & Ors. VS State of NCT of Delhi, Special Leave to Appeal (Cri.) No(s). 8164-8166/2021*, by order dated 18/07/2024, has observed as under:-

“1. In this batch of cases, the primary issue that arises for consideration is as to whether a chargesheet without the FSL/Examiner's Report in a NDPS case can be termed as an incomplete Report' under Section 173 Cr.PC.?”

In the same order, the Supreme Court in Paragraph No.8 has observed as under:-

“8. The orders granting interim bail to the petitioners shall continue to operate until further orders.”

It would be further useful to refer to the order in the case of *Jabir Kha (supra)*, wherein the Supreme Court has observed as under:-

“ The contention of the appellant was that the charge-sheet was hurriedly filed, as statutory period of 180 days for completing the investigation was to be over on 23rd October, 2024. The charge-sheet was filed without FSL report in respect of MD, only with a view to defeat the right of the appellant to get statutory bail.

A strange procedure appears to have been followed by the Special Court under the NDPS Act. An order was passed on 3rd December, 2024 recording that the FSL report was not received and that the Special Public Prosecutor requested for grant of time to file FSL report. The Court granted time till 13th December, 2024. On that day, FSL report was simply tendered across the Bar without filing a supplementary charge-sheet. Admittedly, the date of the report is 26th September, 2024. If the date mentioned is correct, it was very much available when the charge-sheet was filed. Strangely, this report was placed on record on 13th December, 2024 without filing a supplementary charge-sheet.

Prima facie, it appears that this conduct on the part of the prosecution is very strange. There are no antecedents brought on record of the appellant. The appellant is in custody for the last one year. Considering the peculiar facts of the case, the appellant deserves to be enlarged on bail till the conclusion of the trial.”

7. Considering the above factual background and the orders of the Supreme Court, *prima facie*, it appears that, the Supreme Court in the case of ***Jabir Kha (supra)***, has specifically observed that, if the FSL report is not part and parcel of the charge-sheet and further it was simply tendered across the bar without filing supplementary charge-sheet, it amounts to following of strange procedure by the Special Court under the NDPS Act, and

therefore, the Supreme Court has enlarged the appellant therein on bail. Admittedly, this order was passed in Special Leave to Appeal (Criminal) No.2993/2025 which is arising out of the Miscellaneous Criminal Case No. 26050/2024, wherein the High Court of Madhya Pradesh, at Indore, has rejected the bail application filed under Section 439 of Cr.P.C. / 483 of BNSS.

8. In this view of the matter, though, *prima facie*, there are serious allegations against the applicant, however, considering the fact that the FSL report was simply tendered across the bar without filing supplementary charge-sheet, which has entitled the applicant to be released on bail, on imposing stringent conditions. Hence, the following order:-

ORDER

(i) The Criminal Application is **allowed;**

(ii) The applicant/accused (Bhaiyyaji Mahadeo Kulmethe) be released on regular bail in connection with Crime No.53/2024 registered with Police Station Aheri, District Gadchiroli, for the offence punishable under Sections 8(c), 20(a), 20(b)(ii), of the Narcotic Drugs and Psychotropic Substances, Act, 1985, (NDPS), on his furnishing a P.R. bond of Rs.50,000/- (Fifty

Thousand Rupees) with two solvent sureties in the like amount;

(iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence;

(iv) The accused shall provide his residential address and cell number to Police Station concerned and shall not change his place of residence without prior intimation to the Investigating Agency;

(v) The accused shall attend each and every date of trial regularly. If he fails to attend the trial for two consecutive dates, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail or even trial Court *suo moto* take cognizance and cancel the bail;

(vi) The applicant shall not commit similar type of offence, and in case, he commits similar type of offence, the prosecuting agency is at liberty to seek cancellation of bail;

(vii) Pending Misc. Application(s), if any, also stand disposed of;

[M.M. NERLIKAR, J]