



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

CRIMINAL APPLICATION [BA] NO. 1315 OF 2025.

Nitinkumr Malkham Kathoke

-VERSUS-

State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.M. Daga, Advocate for the Applicant.
Shri V.A. Thakare, A.P.P. for the Non-applicant.

CORAM : M.M. NERLIKAR, J.

DATE : FEBRUARY 11, 2026.

Heard.

2. The applicant came to be arrested in connection with Crime No.486/2024 registered with Tahsil Police Station, Nagpur City for the offence punishable under Sections 8[c] and 21[b] of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS). Charge sheet in the matter came to be filed and Sections 21[c] and 29 of the NDPS Act came to be added.

3. The first information report came to be lodged on

receipt of an information on 01.09.2024 that one person (Mohd. Tabrez) was found in suspicious condition in front of Indian Engineering Corporation shop situated on Central Avenue Road. On search conducted of the said individual, 2 transparent plastic packets were found in his possession containing Mephedrone (MD), which came to be seized. The said person was taken into custody, and during interrogation he disclosed name of one Komal Nitin Pawar. This Komal Nitin Pawar disclosed name of the present applicant, that she has sold 55 gms of MD. First information was registered, investigation was carried out and charge sheet is filed before the competent Court.

4. The learned Counsel appearing for the applicant submits that the incident is dated 01.09.2024, wherein one co-accused namely Mohd. Tabrez was arrested with 10 gms of MD drug. On the information given by said Mohd. Tabrez, one Komal Pawar was arrested, and on search of her house, 7 gms of MD was seized. On her interrogation, she disclosed that she has sold 55 gms of MD to the present applicant, and therefore, present applicant came to be arrested on 05.09.2024

at about 4.23 a.m.

The learned Counsel submits that the raid was conducted at the house of the applicant after sunset. That as per Section 42[1] of the NDPS Act, if an officer wants to conduct raid after sunset, he is required to record grounds of belief and in absence of such recording, the entire raid conducted by the investigating officer or police agency stands vitiated and therefore, on this sole ground the applicant is entitled to be released on bail. It is his further submission that, the grounds of belief are missing in the entire charge sheet, so also there is no compliance of Section 42[2] of the NDPS Act. There is no authorization filed by the investigating officer along with the charge sheet and for said purpose he has relied on the order of this Court passed by this Court (Principal Seat at Bombay) in case of **Shivraj Gorakh Satpute .vrs. The State of Maharashtra - (Bail Application No.2865/2022 dated 15.09.2023)**. It is further submitted that this Court has already released one of the co-accused namely Komal Nitin Pawar by granting her bail vide order dated 12.09.2025 in Criminal Application No.804/2025. In

this regard, it is his submission that admittedly 55 gms of MD was sold by Komal to the present applicant, and therefore, merely possession of 55 gms., of MD with the applicant cannot be attributed only to the applicant, since the fact remains that as per statement of Komal, she has sold 55 gms, and therefore, she is equally responsible for selling said drug, however, considering the fact that the Court has released Komal on bail, and therefore, the applicant also deserves to be enlarged on bail.

The learned Counsel has invited my attention to the statement of Komal recorded on 04.09.2024, wherein further part of 05.09.2024 and 08.09.2024 has been narrated, which appears to be part and parcel of statement dated 04.09.2024. In this regard it is the submission of the learned Counsel that there is no date recorded on the said statement in respect of further part, and therefore, a doubt can be raised as to whether the statement is recorded on 04.09.2024 or 08.09.2024. The charge sheet is therefore, manipulated one and prays that the applicant be released on bail.

5. On the other hand, the learned A.P.P. vehemently

opposed the application by stating that though there are no grounds of belief recorded or included in the charge sheet however, it is not required, when there is compliance of proviso to Section 42[1] of the NDPS Act, which provides that if there is authorization in that case, there is no requirement of grounds of belief to be recorded and therefore, submits that there is no substance in the argument of the applicant. Authorization letter issued by the Senior Police Inspector, Police Station, Tahsil, Nagpur City is placed before me wherein the authorization was obtained vide O.W.No.2786/24 dated 04.09.2024. Admittedly 55 gms of MD was recovered from the applicant from his house. Even the said MD is supported by the report of Chemical Analyzer, it is therefore submitted that it is a racket who is doing the business of this drug and future generation is being destroyed by this racket. That merely due to some procedural lapses are there, that by itself is not sufficient to release the applicant on bail. My attention is invited to the Station Diary Entry where statement of Komal is shown to have been recorded, wherein she has disclosed name of the present applicant, stating that

she has supplied MD to him and lastly submits that there is no merit in the application, and the same deserves to be rejected.

6. I have heard the rival submissions of the parties. This Court in case of Shivraj [supra], had an occasion to deal with Section 42 of the NDPS Act, and while dealing with the same, this Court has considered catena of judgments delivered by the Hon'ble Supreme Court and in paragraph nos.4 to 9 has held as under :

“4. Mr. Ashish Satpute, learned counsel for the Applicant contends that search was conducted between sunset and sunrise without complying with the provisions of Section 42(2) of the NDPS Act. He has relied upon the decisions of Mohinder Kumar Vs. The State, Panji Goa, AIR 1995 SC 1157. He further submits that there is non compliance of mandatory procedure of seizure and sample, which prima facie renders the seizure illegal. Reliance is placed on the decision of Union of India Vs. Bal Mukund and Ors., (2010) 1 SCC (Cri) 541. Learned counsel for the Applicant further submits that section 2(b) of NDPS Act defines Ganja as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops). He submits that chemical analysis report reveals that the contraband forwarded for analysis contained seeds, tops and flowering/fruiting tops. This discrepancy raises a doubt about the quantity of the contraband allegedly seized from the Applicant.

5. *Per contra, learned APP submits that the contraband was recovered pursuant to the disclosure statement made by the co-accused that he would show the place from where he had collected the contraband. There was no specific information as regards the contraband. It being a case of chance recovery, compliance of procedure under section 42 of the NDPS Act was not necessary. She has relied upon the decision of the Apex Court in Sorabkhan Gandhkhan Pathan and anr. v/s. State of Gujarat (2004) 13 SCC 608. She further submits that the seizure panchanama indicates that commercial quantity of flowering/fruited tops along with seeds, leaves and stalks which is Ganja within the meaning of section 2(b) of the NDPS Act, was seized from the house of the Applicant. She has relied upon the decision of Shivkumar Mishra vs. State of Goa (2009) 3 SCC 797. She submits that the seizure and sampling is in consonance with the procedure and the discrepancies pointed out by the learned counsel for the Applicant cannot be considered at this stage and are to be decided at trial.*

6. *I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.*

7. *The Applicant seeks bail inter alia on the ground of breach of section 42 of the NDPS Act. This provision deals with the power of entry, search, seizure and arrest without warrant or authorization. The scope of section 42 has been considered by the Apex Court in State of Rajasthan v/s. Jagraj Singh @ Hansa (2016) 11 SCC 687 and Boota Singh and ors v/s. State of Haryana 2021 SCC Online SC 324. The Apex Court has observed that section 42(1) indicates that any authorized officer can carry out search*

between sunrise and sunset without warrant or authorization. The scheme indicates that in the event the search has to be made between sunrise and sunset, the warrant would be necessary unless the officer has reasons to believe that a search warrant or authorization cannot be obtained without affording the opportunity to the offender to escape and the grounds of belief have to be recorded.

8. *In Union of India through Narcotic Control Bureau, Lucknow v/s. Md. Nawaz Khan in Criminal Appeal No.1043 of 2021, the Apex Court has reiterated that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer, in exceptional circumstances but warrant immediate and expedient action, the information shall be written down later along with the reasons for the delay. It is further observed that whether there was compliance of the procedure laid down under section 42 of the Act, is a question of fact and should be raised in the course of the trial.*

9. *In the instant case, it is not in dispute that the house of the Applicant was searched and Ganja was seized between sunset and sunrise without any warrant or authorization and that there was no compliance of Section 42 of the NDPS Act. It is sought to be projected that it was a chance seizure and hence, compliance with section 42 was not possible. In this regard, it is relevant to note that the accused no.1 – Vinod Rajaram Shinde, who was allegedly found in possession of two bags containing 22 kgs of Ganja was arrested on 01/07/2021. It is the case of the prosecution that on 02/07/2021, the accused no.1 had made a disclosure statement that he was willing to show the place and the*

person from whom he had purchased the contraband and that pursuant to the said disclosure statement, 10 kgs of Ganja was recovered from the house of accused no.2 – Samadhan Tawde at Nashik. The accused no.2 allegedly made a disclosure statement on 05/07/2021 that he had purchased the contraband from the Applicant herein, who was a resident of Sangamner, Ahmednagar and that he was willing to show his house. Pursuant to the said disclosure statement, the NCB team proceeded to the house of the Applicant at Ahmednagar and allegedly recovered 50 kgs of Ganja from his residence. The material on record reveals that the co-accused had disclosed the name of the Applicant as well as his address. Hence, prima facie it was not a case of chance recovery or seizure in the normal course of investigation but it was on the basis of specific information given by the co-accused. It is also pertinent to note that the said information was given at about 3.00 p.m. and the search and seizure was conducted after sunset. It is not the case of the prosecution that the empowered officer did not have sufficient time to obtain warrant or authorization without affording opportunity to the Applicant to escape or conceal the evidence. The concerned officer has not recorded reasons for such belief in terms of proviso to Section 42(1) of the NDPS Act. Hence, prima facie the search and seizure, which is in contravention of the mandatory provisions of Section 42 of the NDPS Act prima facie makes the recovery doubtful.”

7. Keeping in mind the exposition of law laid down by this Court in above matter, I proceed to deal with the present application. Admittedly, the applicant herein was arrested on the

basis of the statement of Komal, and during search of his house 55.48 gms of MD was recovered. It further appears that the raid was conducted after sunset. Perusal of the charge sheet does not reveal any grounds of belief recorded by the investigating officer. To this the learned Counsel for the applicant submitted that it is necessary to record grounds of belief before raiding the premises after sunset. On enquiry as regards the authorization letter bearing O.W.No.2786/24 dated 04.09.2024 issued by the Senior is Police Inspector, Police Station, Tahsil, Nagpur city in favour of the investigating officer, the learned A.P.P. has shown copy of one page and submits that the same is extract of the register wherein the said outward number is mention. It is very interesting to note here that this extract would show that this was from office of the Assistant Commissioner of Police relating to case entry no.2786/24 dated 04.09.2024, further it goes to show that this extract is from the office of the Assistant Commissioner of Police, Kotwali. Without commenting further, it is crystal clear that admittedly the authorization letter was not issued by the Assistant Commissioner of Police, however, the question remains that how in the outward register of the office of the ACP, the entry No.2786/24, authorizing the investigating officer by the Senior Police Inspector, Police Station Tahsil, Nagpur can be entered. Further it transpires from

the entire record that this authorization letter was not part and parcel of the charge sheet. On query, the learned A.P.P. submits that later the said authorization was filed in the Court by the investigating officer vide letter dated 17.12.2025, i.e. after filing of the present application and when the applicant has raised the said ground in his application. Therefore, prima facie it appears that authorization at present cannot be believed. The authorization was issued by the Senior Police Inspector, wherein the entry of the outward number is shown in outward register maintained at ACP Kotwali. This is something strange and therefore, from all the facts discussed above, it is concluded that neither there is any authorization, nor there are grounds of belief recorded, as provided under Section 42[1] of the NDPS Act. Now admittedly from the record it appears that 55.48 gms of MD was recovered from the house of the applicant, however, he has obtained the said MD from Komal, and this Court has granted bail to her vide order dated 12.09.2025 in Criminal Application No.804/2025. Therefore, considering over all facts of the case, coupled with the fact that investigation is over and charge sheet is filed and that, the present applicant is behind bars since 05.09.2024, and yet charges are not framed, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant /accused Nitinkumar Malkham Kothoke be released on regular bail in connection with Crime No.486/2024 registered with Tahasil Police Station, Nagpur City for the offence punishable under Sections 8[c], 21[b], 21[c] and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) on his furnishing P.R. Bond of Rs.50,000/- with two 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 one single date, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail.
- (vi) The above observations are prima facie in nature, and restricted for the purpose of deciding this application. The Trial Court shall not get itself influenced by said observations,

during the course of trial.

- (vii) Misc. Applications, if any, are also disposed of.

JUDGE