



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

CRIMINAL APPLICATION [ABA] NO.215 OF 2026

[Shri Mahadeo Ramji Rathod .vs. The State of Maharashtra, through Police Station Officer, Police Station,
Pusad City, District-Yavatmal]

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

Court's or Judge's orders

Mr. V.S. Gokhale, Advocate with Mr. R.J. Shinde, Advocate for Applicant.
Ms. M.R. Kavimandan, APP for Non-Applicant-State.
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CORAM : RAJNISH R. VYAS, J.

DATE : APRIL 21, 2026.

1. Apprehending the arrest, the applicant-original accused no.2 Mahadeo Ramji Rathod has approached this court. The First Information Report No.55/2026 dated 28.01.2026 came to be registered with Pusad City Police Station, District-Yavatmal for the commission of offences punishable under Section 20 (b) (ii) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. In short, it is alleged in the first information report by the Police Sub-Inspector named, Sharad Lohakare that a secret information was received that one person would be carrying ganja and, therefore, the members of the raiding parties were initially summoned. After following the procedure and apprising the accused about his right, the personal search of the accused was made. The accused was carrying one plastic bag in which the dry ganja was kept. The weight of ganja was 1 kg. 665 grams and cost of which was Rs.33,300/-. The ganja along with a vehicle and a mobile were seized and thus the accused no.1 was arrested.

3. It is during the course of investigation and on the basis of the statement of the accused no.1, the name of present applicant/accused revealed. The accused no.1, during the course of investigation, has revealed that he has purchased the ganja from the present applicant.

4. The learned counsel for the applicant has argued as under :

(i) On the basis of statement made by the co-accused, he cannot be implicated. The rigorous of Section 37 of the NDPS Act would not be applicable as the ganja which was recovered from the accused no.1 was not of commercial quantity;

(ii) According to him, just because there are few telephonic calls which were exchanged that would not be a material enough to reject the anticipatory bail application and

(iii) He has relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Seesh Singh @ Mor .vs. State of Punjab passed in Criminal Appeal No.822/2020 on 02.12.2020.*** He has also relied upon the judgment passed by Coordinate Bench of this Hon'ble Court in the case of ***Samir Abdul Jabbar Shaikh .vs. State of Maharashtra, reported in 2022 SCC Online Bom. 5720.*** He has also invited my attention to the order passed by the coordinate bench of this court in ***Criminal Application (ABA) No.639/2025 dated 18.9.2025.***

5. Per contra, the learned APP has contended that at the stage of deciding an application for grant of anticipatory bail indepth enquiry is not required. According to her, from the date of registration of the first information report, the applicant is absconding and due entries are taken by the investigating agency

in the station diary showing that the investigating team had visited the house of the applicant, but he was not found. She thus submitted that in absence of the applicant the chargesheet was required to be filed. According to the learned APP, the conduct of the accused in avoiding the investigation, disentitles him from claiming the discretionary relief. She has pointed out that there are two calls on 27.1.2026 which are exchanged between the applicant and original accused no.1, whereas offence was registered on 28.1.2026. She submitted that the judgments relied upon by the applicant are not at all applicable in the case in hand.

6. With the assistance of the respective counsels, I have gone through the record of the case. The first information report was registered on 28.1.2026 for the offences stated above. It is not in dispute that the ganja was seized from the original accused no.1 and not from the present applicant. It has come on record, more particularly in the first information report that it was the original accused no.1, who has stated that he had purchased the ganja from the present applicant. The CDR and SDR which are part of the chargesheet shows that there were two telephonic calls which were exchanged between the applicant and original accused no.1 a day prior to the incident. The chargesheet also shows station diary entry corroborating the version advanced by the learned APP that the applicant was not available at his house and when on 20.2.2026 the Police Officers went to his house, he ran away from the back door is also on record. The station diary dated 4.3.2026 also shows the visit of the Investigating Officer to the house of the applicant who was not found there. The fact that the chargesheet is filed in his absence is also crystal clear. Thus, it is clear that the applicant is avoiding the process of law.

7. Coming to the judgment of the Hon'ble Apex Court in the case of ***Seesh Singh @ Mor .vs. State of Punjab*** (supra), it is relevant to mention here that in that case 45 persons were initially stated to be involved in the crime and 14 persons were charged, what was recovered was 100 grams of Alprazolam powder, it was argued by the counsel for the accused therein that it was not a commercial quantity. The Hon'ble Apex Court observed that since the applicant therein was impleaded as an accused through the statement of co-accused, he was extended benefit of anticipatory bail.

8. In the present case, there is not only a statement of co-accused but also the call details which speaks about exchange of phone calls. Therefore, the aforesaid judgment would not be helpful for the accused.

9. The learned counsel has also relied upon the case of ***Samir Abdul Jabbar Shaikh .vs. State of Maharashtra*** (supra), more particularly Paras 7 and 8 and has contended that even there are CDR showing the exchange of calls between the accused persons, same would not be enough to deny the benefit of anticipatory bail. At this stage, the relevant paragraphs 7 and 8 in the case of ***Samir Abdul*** (supra) reproduced herein below :

7. The learned Additional Public Prosecutor has submitted that there are entries in the bank account of the Applicant showing that he had received certain amount from the Accused No. 1 and there are also CDR record showing that the Applicant was in contact with the Accused No. 1. He therefore, submitted that the further investigation in the matter is necessary for which the custodial interrogation of the Applicant is required.

8. I have considered the submissions made. Prima facie it appears that there is no recovery of the contraband from the Applicant. Even the contraband said to be recovered from the co-accused is of intermediate quantity and therefore admittedly the rigorous of Section 37 of the said Act are not applicable. There are no criminal antecedents to the discredit of the Applicant.

10. If the aforesaid observations of the Coordinate Bench of this court are perused, it would be revealed that the Para 7 records the contention of the Additional Public Prosecutor, whereas Para 8 gives the finding in which it is stated that the recovery of the contraband was not made from the applicant and the quantity involved is of an intermediate quantity. The court has nowhere discussed, as to whether, the statement of the co-accused can be taken into consideration or not. Thus, the said judgment would not be applicable.

11. The learned counsel then relied upon the order passed by the Coordinate Bench of this court dated 18.9.2025 in the case of ***Tanmay Akhilesh Trivedi .vs. State of Maharashtra*** (supra) more particularly paragraph nos.11 and 12, which are reproduced herein below :

11. The applicant is claiming parity as accused Shiva Tiwari is already released on bail though the co-accused has disclosed his name, the trial Court has granted him bail. Said Shiva Tiwari has disclosed the name of present applicant. Though the learned A.P.P has stated that the application for cancellation of bail of said Shiva Tiwari is filed, the applicant has filed on record the order passed on application for cancellation of bail and said application is rejected on 8.9.2025. The arguments are based on the provisions of Section 67 of N.D.P.S. Act. The admissibility of the confessional statements of accused recorded under

Section 67 of N.D.P.S. Act is critically examined by the Hon'ble Supreme Court in case of Tofan Singh and laid down that said confessional statements are not admissible in evidence. It is seen that the said confessional statements recorded under Section 67 of the N.D.P.S. Act are clearly hit by the provisions of Section 25 of the Indian Evidence Act.

12. Considering the law laid down by the Hon'ble Apex Court and the judgments on which the learned Senior Advocate has relied, it appears that the said confessional statement cannot be considered for registration of offence. The evidentiary value of the statement of co-accused is considered as per Section 25 of the Indian Evidence Act. The co-accused is already released on bail. The different yardsticks cannot be applied for the accused who is having similar role. The prosecution has relied on the C.D.R. Report which connect the accused with the crime as there are phone calls from this applicant and co-accused at the relevant time. It is seen that the accused is implicated on the basis of confessional statement recorded under Section 67 of N.D.P.S. Act which is clearly hit by Section 25 of the Evidence Act. If the statement of co-accused is kept away from the purview of consideration then merely on the basis of C.D.R. records, prima facie, conviction of the applicant cannot be sustained. Needless to state that it shall be open to the prosecution to prove the same in trial. The case of Narcotics Control Bureau V/s. Mohit Aggarwal (supra) is about regular bail and other material against accused is considered, which is not the case in hand.

12. The learned counsel then contended that even there is a statement of the co-accused and the SDR and CDR report which connect the accused to the crime, the anticipatory bail application was granted. The Coordinate Bench of this court, has observed that the accused therein was implicated on the basis of confessional statement recorded under Section 67 of the NDPS Act which was hit by Section 25 of the Indian Evidence Act and

in that background the said statement of co-accused was ignored. It was further observed that merely on the basis of CDR records prima facie conviction of the applicant cannot be sustained.

13. Thus, what was taken into consideration was the fact that the statement of co-accused would not be admissible evidence so also the CDR record.

14. In that regard, it is necessary to see whether the statement of co-accused can be considered to be a weak piece of evidence at the stage of deciding anticipatory bail application or not.

15. The Hon'ble Apex Court in the case of the ***State of Haryana .vs. Samarth Kumar***, reported in ***2022 LiveLaw (SC) 622*** in para 4 to 9 has observed as under :

4. *The High Court decided to grant pre arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC 1.*

5. *But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.*

6. *Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.*

7. *The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.*

8. *In cases of this nature, the respondents may be able to take advantage of the decision in **Tofan Singh vs. State of Tamil Nadu (supra)**, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.*

9. *To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.*

16. In that matter, the prosecuting agency had challenged the order granting pre-arrest bail to the accused. It was stated that the High Court in that case had decided to grant pre-arrest bail to the respondents/accused therein only on the ground that no recovery was effected from the respondents and the applicant was implicated only on the basis of the disclosure statement of the main accused namely, Dinesh Kumar. The reliance then was placed by the High Court in the case of **Tofan Singh .vs. State of Tamil Nadu**, reported in **(2021) 4 SCC 1**. The Hon'ble Apex Court in the **State of Haryana .vs. Samarth Kumar's case** (supra) in Paragraph 8 has observed that the benefit of the law laid down

by *the Tofan Singh* may be taken at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. Thus, the observations of the Hon'ble Apex Court shows that even the statement of co-accused can be relied upon. Since the applicant is shown as absconding and there are CDRs which supports the case of the prosecution that the applicant was in a contact with the accused no.1 and as indepth enquiry is not required to be conducted while deciding the issue of pre-arrest bail, I proceed to pass the following order :

ORDER

The application is rejected.

(RAJNISH R. VYAS, J.)