



In The Court of Judge Special Court NDPS Act, Nagpur.

Presided over by
Shri. P. M. Nagalkar.

I. A. No.2 of 2024.
Special Case No.98 of 2024
CNR No: MHNG010019792024.
Crime No.470 of 2023, P. S.Pardi

State of Maharashtra.
(Through P.S.Pardi)
V/s
Sheikh Shahruk and Ors.

Applicant - Shaikh Jibrail @ Pinki S/o Shaikh Razzak.

Order below Exh.38
(Date: 18th March 2025)

1. This is an application for issuance of directions as applicant/accused Shaikh Jibrail @ Pinki S/o Shaikh Razzak, be released on bail, U/Section 483 of the Bhartiya Nagarik Suraksha Sanhita. Applicant/accused booked in Crime No.470 of 2023, for the offences punishable U/Sections 8(c), 20(b)(2)(c) and 29 of the NDPS Act.
2. Perused the application along with documents annexed here with and say/report of Investigating Officer/APP. Heard both the sides at length.
3. In the light of this facts emerged, submissions by the parties and material on the record, the following points arise for determination

before this Court. The said points and the findings thereon which follow the reasons as:

Point For Determination.

| Sr. No. | Point | Finding |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 1. | Whether the applicant/accused Shaikh Jibrail @ Pinki S/o Shaikh Razzak, made out the case as to issuance of direction as to be released on bail, in the given set of facts? | ...No. |
| 2. | What order? | ...Application Rejected as per final order. |

REASONS

As to the point no.1:

4. The applicant came with case that he had falsely implicated in this case and he had been arrested on 29/12/2023. Since then, he is in custody. Nothing have been seized from him and earlier his bail application was rejected. However, under changed in circumstances filed the present application for grant of bail.
5. It is submitted that he is young man and having dependency of family and no evidence against him. As such, prayed that considering the period of incarceration will cause prejudice to him, therefore, application be allowed.
6. On the other hand the application opposed by the prosecution on the ground that as the huge quantity of contraband seized and that too the same have been concealed. There is evidence against him as case is not only based on the statement of co-accused but also there are some other evidence in the form of CDR. Therefore, involvement of the present applicant accused is apparent. Hence, claimed that application be rejected.

7. It is further submitted that the applicant is having as many as 52 crimes under the various offences. Even some are under the NDPS Act. It is also appeared that the applicant was already been on bail and then again involved and indulged in similar activity and therefore, booked in the present crime. Hence, opposed.
8. On behalf of the accused in support of the contention as submitted that procedure under Section 52(A) of the NDPS Act not followed and therefore, relied upon in *Bail Application No.3046 of 2024, Akash Prem Panjwani..vs..State of Maharashtra*, and *Bail Application No.2254 of 2024 Chandrabhan Janardhan Yadav..vs...State of Maharashtra*, and also relied upon *Criminal Bail Application No. 3353 of 2024 Raja @ Bhushan Ganpat More..vs...State of Maharashtra*.
9. On behalf of the prosecution relied upon the Judgment of Hon'ble Apex Court in case of *Criminal Appeal No. 5544 of 2024 Narcotics Control Bureau..vs...Kashif* of the Hon'ble Supreme Court. From the record it appears that as to see as being subsequent bail application whether there are subsequent developments or facts or changed in circumstances as after adjudication of first bail application. In his pleading nothing have been stated but only stated that no role attributed to him. However, from the CDR and coupled with statement of co-accused apparent that he is involved in this case. Earlier bail application also decided on merit by this Court and same have been rejected.
10. Since, it is submitted that there are some Clause in investigation as documents were prepared at the police station and inventory was not properly made under Section 52(A) of the NDPS Act. So also since his arrest is in custody. It is contended that inventory was taken on

02/09/2023 the samples which have been sent for C. A. on 27/09/2023. As such, it is submitted that procedure not followed.

11. In this respect relied upon Judgment in which emphasized was given as proper procedure have not been followed and then bail can be granted as held in case of ***Akash Prem Panjwani*** and ***Raja @ Bhushan Ganpat More*** as well as in case of ***Chandrabhan Janardhan Yadav***. Since for adjudication of bail as it is settled legal preposition that evidence has to be considered and not to be discussed.
12. As to counter that some lapses but same is not fatal and relied upon as law laid down in case of ***Kashif*** cited supra by the Hon'ble Apex Court decided on 20th December 2024. As considering the rigor of Section 37 of the NDPS Act and plea was taken as non compliance of Section 52(A) of the NDPS Act, the Hon'ble Lordship held that these are irregularities and illegalities as the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of the said Act and the impact on the society as a whole. It is also laid down particularly in para-39 as Section 37 of the NDPS Act is mandatory in nature and recording of findings as mandated in Section 37 is *sine qua non* is known for granting bail and it is ruled that merely a procedural irregularity which would neither entitled to the accused for bail nor would vitiate the trial on that ground alone.
13. Para No.39 is reproduced as under :-
 - (i) *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.*

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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, as also the statutory presumption permissible under Section 54 of the NDPS Act.

14. In view of the above law laid down by the Hon'ble Apex Court recent and considering mandate of Section 37 of the NDPS Act the facts on record this Court is of opinion that the applicant failed to establish that there is no reasonable ground of being guilty for the offence charge. Moreover, trial already been commenced and almost five witnesses have been examined.
15. In this backdrop with great respect to their Lordship in ratio laid down in above referred authorities on behalf of the accused are not applicable as case in hand is contextually different as laid down in case of *Kashif* cited supra. Hence, the finding of point no.1 is recorded as "**Negative**". Consequently, proceed to pass following order.

ORDER

1. Application is hereby rejected.

Dictated and pronounced in open Court.

Date : 18th March 2025.

(Pramod M. Nagalkar)
Judge Special Court NDPS Act,
Nagpur.