



**IN THE COURT OF ADDITIONAL SESSIONS
JUDGE AT PANVEL, DISTRICT- RAIGAD**

SPECIAL CASE NO.76/2024

The State of Maharashtra

--- Prosecution

Vs.

Kamal Jayramdas Jeswani and Ors.

--- Accused

Corum - Santosh C. Shinde

Date - 24th December 2024

Appearance-

Ld. advocate Mr. Lochan Chand for accused No.1

Ld. advocate Mr. Nambudari for accused No.3.

Ld. advocate Mr. Vaibhav Punekar for accused No.4

Ld. advocate Mr. A. R. Khan a/w Mansi Mhatre for accused No.5

Ld. Addl. P. P Mr. Y. S. Bhopi for Respondent State.

Order below exh.3, 17, 35 & 40

1. These applications are filed by accused No.1 & 3 to 5 for regular bail after filing of charge-sheet. It is alleged that accused committed offence punishable u/s.22(c), 23, 29 r/w 8(c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short "NDPS Act").
2. Notice was issued to State of Maharashtra.

3. Heard Ld. advocate Mr. Lochan Chand for accused No.1, Ld. advocate Mr. Nambudari for accused No.3, Ld. advocate Mr. Vaibhav Punekar for accused No.4, Ld. advocate Mr. A. R. Khan for accused No.5 and Ld. Addl. P. P Mr. Y. S. Bhopi for the State.
4. Ld. advocate Mr. Lochan Chand for accused No.1 submitted that there is non-compliance of section 42 of the NDPS Act as information received was not taken down in writing and its copy was not forwarded to immediate superior. Name of accused is not mentioned in information and when written communication was made for obtaining search warrant, name of accused is written as owner of factory premises which shows that search warrant was obtained subsequently. Name of factory is mentioned as "M/s. Anchal Chemicals" however, on spot name on board outside the factory was "India Electric Poles Manufacturing Co. Unit-2" which creates suspicion.
5. Mr. Lochan Chand submitted that Panchanama dt.7th December 2023 ended on 8th December 2023 at 5:00 AM and according to muddemal receipt, alleged seized contraband was deposited in muddemal room on 7th December 2023. On 8th December 2023, officers of complainant had written to Directorate of FSL, Kalina to investigate crime scene and thereafter, on 8th December 2023 experts went to spot and after that factory was sealed which raises reasonable suspicion with respect to Panchanama dt.7th December 2023 & recovery of alleged contraband.

6. Mr. Lochan Chand further submitted that there is non-compliance with Standing Order No.1/88 as samples drawn during Inventory Panchanama dt.12th December 2023 are less than 5 grams. In field testing, Mephedrone was detected and but in CA report, it is Ketamine therefore substance tested during panchanama and by FSL is not the same substance. Accused No.1 is 12th pass and possess no knowledge of chemicals. He is unaware of activities carried out by co-accused in said premises. Accused No.1 had rented the factory for production of 'Agarbatti powder' and he was not part to any conspiracy. In raid dt.6th December 2023, nothing incriminating was found and thereafter alleged contraband planted in the said factory. Accused is innocent therefore he is entitled for bail.

7. Mr. Lochan Chand has relied upon judgment of Hon'ble Supreme Court in **State of Rajasthan Vs. Parmanand & another [2014 DGLS (SC)213]** & **Valsala Vs. State of Kerala [1994 CriLJ 1]** and judgments of Hon'ble Bombay High Court in **Nisha Nagesh Gaikwad Vs. The State of Maharashtra [WP (St.) No. 19472/2024 2022 decided on 15 October 2024]**, **Mahesh Pandurang Naik Vs. The State of Maharashtra [WP (St.) No.13835/2024 2022 decided on 18 July 2024]**, **Ugochukwu Solomon Ubabuko Vs. Union of India [2021 SCC Online Bom 3572]**, **Suaibo Ibow Casamma Vs. Union of India [MANU/MH/0428/1993]**, **Zakir Sharifulla Sayyed Vs. The State of Maharashtra [Bail Application No.1966 of 2019 decided on 26 August 2019]**, **Dharmaveer Lekkham Sharma Vs. The State of**

Maharashtra [2001 BomCR (Cri.) 9], Asho Muktinath Pande Vs. The State of Maharashtra [Bail Application No.2105 of 2015 decided on 8 February 2016], Sanobar Shafiq Khotal Vs. The State of Maharashtra [Bail Application No.3337 of 2021 decided on 14 October 2022].

8. Ld. advocate Mr. Nambudari for accused No.3 submitted that accused is wrongly prosecuted and there are mandatory procedural irregularities. Case is based upon disclosures which are inadmissible and statements of witnesses which are either obtained under coercion or suffers from material inconsistencies. There is failure to comply with section 42 of the NDPS Act which vitiates the trial. At M/s. Anchal Chemicals, accused No. 3 was not present and he has been arraigned on basis of statement of accused No.1.
9. Mr. Nambudari submitted that there is nothing on record to suggest that accused No.3 had set up any assembly plant or provided formula to manufacture alleged Mephedrone. Result of presumptive tests as well as examination report of FSL is under shadow of profound doubt. Statement of witnesses without any independent corroboration are nothing but an afterthought and in statements, it is nowhere mentioned that accused No.3 was involved in manufacturing process.
10. Mr. Nambudari further submitted that in statements recorded u/s.164 of the CrPC of employees of M/s. Anchal Chemical shows that accused No.2 used to look after the administration of the factory whereas accused No.1 used to

take away the 'Powder' which was produced in the factory and no role is attributed to accused No.3 in their statements. Alleged recovery of 174.50 Kgs of Mephedrone from accused No.3 is completely doubtful as accused No.3 did not possess keys of room where alleged recovery of Mephedrone took place and said room was rented by him to accused No.1 for period from July 2022 to May, 2023.

11. Mr. Nambudari further submitted that Leave & License agreement entered into between accused No.1 & godown owner Mr. Shriram Patil shows that accused No.3 had no ownership/interest or control whatsoever on the room. Accused No. 3 was not a party to Leave & License Agreement and he had no share/interest/ownership of M/s. Anchal Chemical. Recovery of chemicals & raw materials u/s.27 of the Evidence Act, does not indicate that said chemicals & raw materials were used in alleged manufacturing process. There is nothing on record to indicate that Shri Krishna Industries is owned or managed by accused No.3 or he is working with or employee of that Company.
12. Mr. Nambudari further submitted that from 31st March 2024 accused No.3 is detained in jail without any judicial order of this Hon'ble Court and consequently he is in illegal custody in contravention of section 36A of the NDPS Act r/w section 167 of the CrPC. Bar u/s.37 of the NDPS Act will not come in the way of accused No.3 and charge of conspiracy u/s.29 of the NDPS Act requires substantial evidence of an agreement between conspirators and there is no evidence to show involvement of accused No.3 with definitive actions or

communications or meeting of mind that would substantiate a conspiracy.

13. Mr. Nambudari has relied upon judgments of Hon'ble Supreme Court in **Karnail Singh v. State of Haryana [2009 (8) SCC 539]**, **Boota Singh & Ors Vs. State of Haryana [2021 (19) SCC 606]**, **Sarija Banu alias Janarthani alias Janani & Another Vs. State through inspector of Police [2004 (12) SCC 266]**, **Directorate of Revenue Anr. Vs. Mohammad Nisar Holia [2008 (2) SCC 370]** & **State of Punjab Vs. Balbir Singh [1994 (3) SCC 299]**.
14. Mr. Nambudari has also relied upon judgments of Hon'ble Delhi High Court in **Asif Ali Vs. State of NCT of Delhi [2023 SCC Online Del 580]** & **Nagesh Sharma Vs. State (NCT of Delhi) [2023 SCC Online Del 1830]**, **Gulab Rai @ Chetan Vs. State (N.C.T of Delhi) [Bail Appln. 3840/2023 decided on 19/1/2024]**, judgments of Hon'ble Punjab & Haryana High Court in **Jagsir Vs. State of Haryana [2001 SCC Online P & H 1369]**, **Pankaj Vs. State of Punjab [2022 SCC Online P & H 1296]** and judgment of Hon'ble Tripura High Court in **Khalek Miah Vs. State of Tripura [2016 SCC Online Tri 88]**.
15. Mr. Nambudari further relied upon judgments of Hon'ble Bombay High Court in **Ashok Manik Mhetre Vs. State of Maharashtra [Bail Application No.4261 of 2021 decided on 15 July 2024]**, **Folarin Abdullaseez Andoyin Vs. The State of Maharashtra [Bail Application No.185 of 2021 decided on 29 November 2021]** & **Lamin Bojang Vs. State of Maharashtra [1997 CriLJ 513]**, **Daulatram Vs. State of Maharashtra [2019**

SCC Online Bom 852], Kurkuttikaran Anthony Vs. A. J. Shaikh Intelligence Officer, NCB, Mumbai [Cri. Application No.334 of 2008 decided on 6 May 2008], Union of India Vs. Akshinder Singh Sodhi [Cri. Application No.79 of 2019 decided on 5 March 2019], Rajaram Kadu Vs. The State of Maharashtra [Bail Application No.2108 of 2016 decided on 13 June 2017], The State of Maharashtra Vs. Rita Ankush Indrekar [Cri. Appeal No.903 of 2006 decided on 5 March 2021], Syed Yusuf Syed Noor Vs. State of Maharashtra [1999 SCC Online Bom 684], Raju Bhavlal Pawar Vs. The State of Maharashtra [Bail Application No.568 of 2021 decided on 20 October 2021], Abdul Sattar Mohammed Iqbal Ansari Vs. State of Maharashtra [Bail Application No.2869 of 2023 decided on 5 March 2024], Rajendra @ Dada Chagan Kale Vs. The State of Maharashtra [Bail Application No.313 of 2022 decided on 28 June 2022], Sanobar Shafik Khotal Vs. State of Maharashtra [Bail Application No.3337 of 2021 decided on 1 October 2022], Najma Abdul Shaikh Vs. State of Maharashtra [Bail Application No.1311 of 2012 decided on 23 October 2012].

16. Mr. Nambudari further placed his reliance upon judgments of Hon'ble Karnataka High Court in **Kelsi Katte Mahammed Shakir Vs. The Superintendent of Customs** [Cri. Petition No.5402/2018 decided on 26 September 2018], **Chandru Kunthur Raghuegowda Vs State** [2017 SCC Online Kar 4258], **Inspector of Customs Vs MS Dhapira Wallang** [2009 SCC Online Kar 364], judgments of Hon'ble Madhya Pradesh High Court in **Banwari Lal Gupta @ Pintu Vs. The State of**

Madhya Pradesh [MCRC-44506-2021], 2. Rahul Vs. State of U. P. [2023 AHC 207427] 3. Gurjant Singh Vs. The State of Punjab [CRM-M-20943-2022 decided on 20/5/2022] and judgment of Hon'ble Kerala High Court in **Basanth Balram Vs. State of Kerala [2019 SCC Online Ker 531].**

17. Ld. advocate Mr. Vaibhav Punekar for accused No.4 submitted that first bail application of accused No.4 was rejected due to misrepresentation of facts by the prosecution. Accused No.4 was illegally detained for 3 days without production before the Court. Accused No.4 is in jail for past 11 months and there is no progress in the trial which violates his rights guaranteed under Article 21 of the Constitution of India. Name of accused No.4 is not mentioned in the FIR. Chemical mentioned in FIR has been seized from accused No.1 to 3.
18. Mr. Vaibhav Punekar submitted that contraband seized is Ketamine & not Mephedrone. In FIR, no role is attributed to to accused No.4. He has never prepared, stored, supplied, imported or exported said contraband substances to any accused or anyone and he is not part of any such criminal conspiracy. Provisions of section 42 of the NDPS Act were not followed. Search was taken by Senior Police Inspector who himself is a Gazetted officer of the team of raiding party. Provisions of section 50 of the NDPS Act are breached. Notice u/s.50 of the NDPS Act appraising accused regarding his right was not issued which has vitiated recovery of alleged contraband.

19. Mr. Vaibhav Punekar further submitted that investigating officers failed to comply with mandatory provisions of section 57 & 52A of the NDPS Act. Shipment dt.20/07/2023, 11/09/2023 & 04/11/2023 are for exporting material named Toluene & Potassium Hydroxide which itself comes under category of hazardous cargo Class-III & VIII. In above three shipments IOC Certificate, if available has to be submitted and accused No.4 has already submitted cargo analysis report alongwith material safety data sheet to concerned Custom Officer for shipment. Assessed copies of Shipping Bill Summary were initiated and after examination of said products, LET Export Copy is issued. LEO Copy is issued when all legal procedures are followed to export said material.
20. Mr. Vaibhav Punekar further submitted that in Shipping Bill Summary dt.20/07/2023, LEO copy was issued which itself mentions the product exported named Toluene. Multimodal Transport Document is issued by authorized Economic Operator called as AEO duly registered with Customs department. Said document reflects HSN Code-27072000 of product Toluene which comes under Class-III. Said Certificate also mentions place & date of issue and also Bill of Lading. Said Product if not found as per Shipping Bill Summary then other procedures mentioned above are not continued and said material gets rejected for Export.
21. Mr. Vaibhav Punekar has placed reliance upon various Shipping Bill Summaries. As per him, accused No.4 has produced Analysis Certificate, Safety Data Sheet & Multimodal

Transport Document of Toluene & Potassium Hydroxide which was exported through shipments along with Shipping Bill details, Container Number & Seal Number. Prosecution has misguided the Court in respect of role of accused No.4. There is no iota of evidence. Material seized from accused No.1 to 3 was not anytime supplied to them.

22. Mr. Vaibhav Punekar further submitted that statement of witnesses no where reflects that accused No.4 at any time prepared, stored, exported, imported or supplied any contraband substance or any chemical seized. Wife of accused No.4 is proprietor of Export-Import Firm run by accused No.4. No raw material is supplied to accused No.1 to 3 for preparation of contraband substance seized therefore, there is no such offense committed by accused No.4. There is no direct connection of accused No.4 in commission of offense.
23. Mr. Vaibhav Punekar has relied upon judgments of Hon'ble Supreme Court of India in **Yusuf @ Asif vs. State [2023 LiveLaw (SC)890]** & **State of Rajasthan Vs. Parmanand & another [2014 DGLS (SC)213]** & **Union of India Vs. Mohanlal [AIRONLINE 2016 SC 606]** and judgments of the Hon'ble Bombay High Court in **Moin Khan Afzal Khan Pathan Vs. The State of Maharashtra [Bail Application No.4051 of 2023 decided on 23 August 2023]** & **Manzar Din Mohammad Shaikh Vs. The State of Maharashtra [Bail Application No.2237 of 2022 decided on 14 February 2024]**.

24. Ld. advocate Mr. A. R. Khan for accused No.5 submitted that there is no evidence produced on record prior to 15th december 2023 to show alleged connection of accused with present crime and accused is wrongly prosecuted. He was illegally detained by investigating officer from 11th December 2023 to 13th December 2023 and subsequently arrested on 15th December 2023 without proper reason or link. No contraband article under NDPS Act has been recovered/ discovered from possession of accused No.5. Alleged warehouse from where said recovery was made does not belong to accused No.5 and there is nothing on record to show that search & seizure was made in compliance with provisions of the NDPS Act.
25. Mr. A. R. Khan submitted that prosecution has not examined any of the chemicals that was seized on alleged disclosure of accused No.5. Section 23 of the NDPS Act is not attracted in present case and there is non-compliance of guidelines issued by the Hon'ble Supreme Court and Hon'ble High Courts while sending samples for analysis. Initial test of seized contraband resembled Mephedrone but final report from FSL confirmed that Mephedrone was not detected.
26. Mr. A. R. Khan further submitted that statement of witnesses reflects that chemicals were ordered in the name of Remedies Bio-Science from different chemical suppliers but prosecution has not recorded statements of those chemical suppliers. There is no evidence to show that accused No.5 has paid money to those chemical suppliers. There are no transport challans to indicate that said chemicals have actually been

received by Vighnaharta Logistics. If material is sold by Remedies Bio-Science to Vighnaharta Logistics then accused No.5 cannot be held responsible and there is no evidence to show that chemicals purchased in the name of Remedies Bio-Science has been used for manufacturing of contraband substance. Accused No.5 was arrested on basis of disclosure of co-accused and same is inadmissible in evidence.

27. Mr. A. R. Khan has relied upon judgments of the Hon'ble Bombay High Court in **Farooq Mohammad Naim Chaudhary Vs. Union of India [Bail Application No.350 of 2022 decided on 7 May 2024]**, **Abdullah Owais Iqbal Shaikh Vs. State of Maharashtra [Bail Application No.1557 of 2023 decided on 5 August 2024]**, **Lamin Bojang Vs. State of Maharashtra [1997 CriLJ 513]** & **Salim Rashid Shaikh Vs. The State of Maharashtra [Bail Application No.2795 of 2024 decided on 20 September 2024]**.
28. Ld. additional public prosecutor Mr. Bhopi submitted that fake name board was fixed on site by accused to misguide. Owner of premises who had given his premises on rent for running factory to accused No.1 in his statement has stated that he had given his premises to accused No.1 and leave & license was executed to that effect. No document is produced by accused No.1 to show that he holds license to run the factory. No permission was taken by accused No.1 from MIDC. Contraband is found in possession of accused and quantity of contraband is commercial quantity therefore rigor of section 37 of the NDPS Act will be applicable.

29. Mr. Bhopi submitted that there was conspiracy between accused to commit the offence. Statement of witnesses shows involvement of accused. Accused were using Hawala system for transfer of money. Raw material was brought from the godown at Bhiwandi. Some contraband is exported. There is proper compliance under provisions of the NDPS Act.
30. Mr. Y. S. Bhopi has relied upon judgment of the Hon'ble Rajasthan High Court in **Balveer @ Bira Mangat Singh Vs. State of Rajasthan [S. B. Cri. Misc. 2nd Bail Application No.4298/2024 decided on 7 August 2024]**.
31. Perused charge-sheet & documents produced by accused.
32. Facts of the case are that police received credible information that in factory named M/s. Anchal Chemicals, Mephedrone is being manufactured. On basis of said information, in presence of panchas, raid was conducted in factory. In that raid, 85.200 Kgs Mephedrone in different plastic drums was found. During search of factory, drums of Methanol, Hydrobromic Acid, Hydrogen Peroxide, Toluene, Mono Methyl Amine (MMA), Diethyl ether, Toluene recycled, Menoethylene glycon (MEG), Acetone, Hydrochloric Acid, Potassium Hydroxide Pellets, Sulphuric Acid, Metal Turning, Sodium Sulphate, Chloroform, Potassium Hydroxide, Benzo Nitrile (white crystalline), Copper Bromide DMS Complex, Cyclo Hexyl Phenyl Ketone and PCPA White Powder in different quantity were found in various drums.
33. On spot, test was carried out with Test Kit and in test, colour of that powered turned to yellowish therefore investigation

officer inferred that the contraband is Mephedrone. Then said contraband was seized and factory was sealed. In inquiry of accused No.1, names of other accused were revealed. On 10th December 2023, as per memorandum statement of accused No.3, raid was conducted in another godown wherein 174.500 kgs powder similar to Mephedrone kept in different drums was seized.

34. On spot, its test was carried out. First test was carried out by Cobalt Thiocyanate Reagent while second test was carried out by Mandelin's Reagent. In Cobalt Thiocyanate Reagent test, colour of powder kept in seven drums turned in blue colour while in Mandelin's Reagent test that colour turned orange to brownish. These tests were conducted by Assistant Chemical Analyzer, Narcotic Division, Kalina, Mumbai. As per test, powder was similar to Mephedrone therefore, samples were sent for final analysis to FSL, Mumbai. After analysis, FSL has sent report that seized powder is 'Ketamine'.
35. If issue of illegal detention raised by accused No.1 & 5 is considered then as per accused No.1, prior to his arrest, he was illegally detained. Similarly, as per accused No.5 from 11th December 2023 to 13th December 2023, he was illegally detained by police. It is not made clear by accused No.1 & 5 as to why that issue was not raised by them before the Magistrate when they were produced in remand before the Magistrate.

36. So also, there is no substance in argument about difference in name of the factory as documents on record are sufficient to refute this contention. If contention regarding suspicion over seizure panchanama dt.7th December 2023 is considered then panchanama was started on 7th December 2023 and it concluded on 8th December 2023. Panchanama shows that factory was sealed after seizure of contraband. If muddemal receipt is considered then it shows about only list of muddemal found in factory. It is not the case that the Muddemal found in factory was brought to the police station. Police had kept muddemal in the factory after its seizure and sealed the factory therefore it becomes clear that muddemal was not deposited in Muddemal room of the police station. Therefore, there is no suspicion over seizure panchanama dt.7th December 2023 & seizure of contraband.
37. If contention regarding difference in substance is considered then it is common that test kit used by investigation officer for confirming contraband on spot may show different substance and later on, if same substance is tested by forensic science laboratory, then that substance may be of different name. Investigation officer is not expert and at that relevant time whatever inference he draws on spot may be based on his own knowledge. Inference of investigation officer cannot be conclusive unless it is confirmed by FSL.
38. In case in hand, seized contraband is detected as Ketamine by FSL. In the year 2011 by notification S.O. 1055 (E), dated 19th October, 2001, in the Table, after serial number 238 at

serial No.238E Ketamine is included in the list of NDPS with its non-proprietary name.

39. As per accused No.1, he had rented out factory premises for production of Agarbatti powder, but he has not produced any document to that effect. As per him, he is 12th pass and possess no knowledge of chemicals. Whether he had knowledge about manufacturing process or not can be considered during the trial. If role of accused No.1 is considered, then when raid was conducted on 7th December 2023 on M/s. Aanchal chemicals, accused No.1 & 2 were found there and contraband weighing 85.200 Kgs was found in factory premises.
40. During investigation, it is revealed that accused No.1 has not obtained required permissions to run factory and fake name board outside the factory was found. As per prosecution, accused No.1 with help of accused No.2 & 3 has manufactured contraband in the factory and accused No.2 was assisting accused No.1 in that process. Accused No.1 had arranged rented flat for accused No.2 and its rent agreement was prepared by accused No.1. He was paying its rent also.
41. As per prosecution, accused No.1 had taken one room on rent for hiding contraband as he had no sufficient space for storage of contraband in the factory and he was paying its rent from account of his son by GooglePay wallet. Police have recorded statement of owner of that room which confirms these facts.

42. Accused No.2 has not preferred any bail application but if role of accused No.2 is considered, then he with assistance of workers in the factory was engaged in process of mixing different chemicals for manufacturing contraband.
43. As per prosecution, accused No.3 has actively participated for procuring factory premises on rent from owner of the premises and he has attended meetings for that reason. Accused No.3 had procured that premises on pretext that washing powder is going be manufactured. He has also signed that rent agreement as witness. Accused No.3 was aware about manufacturing process as he is diploma holder in chemicals and he is involved in mixture of different chemicals for processing contraband.
44. It is alleged that after manufacturing contraband, accused No.3 was sending the same through the hands of one person to the house of accused No.4. Several times accused No.3 had dispatched the contraband to the house of accused No.4 which was later on exported by accused No.4 through one logistic Company.
45. As per prosecution, accused No.3 had raised set up in M/s. Aanchal Chemical for production of contraband & distillation units. It was purchased by him from M/s. Goyal Scientific Glassworks Limited, Gujarat through the hands of a person with whom he was working previously. Accused No.3 himself had purchased that set up in name of Sri Krishna Industries and its bills were paid from the bank account of Sri Krishna Industries.

46. It is alleged that accused No.3 had taken one godown on rent at Bhiwandi for storage of raw material required for manufacturing contraband in the name of M/s. Vihar logistic Firm which is registered in the name of accused No.4. Raw material required for manufacturing contraband was stored in that godown and raw material was purchased from different suppliers.
47. It is further alleged that accused No.3 has collected cash through Hawala system after export of contraband and it was deposited in his bank account from various bank accounts of different persons. As per prosecution, accused No.3 is habitual dealer in NDPS and in the year 2022, offence under NDPS Act was registered against him by Narcotic Control Bureau, Mumbai for possessing contraband in commercial quantity. As per prosecution accused No.3 is convicted by the Special NDPS court, Mumbai and he is on bail as appeal is pending before the Hon'ble Bombay High Court. As per prosecution, this is second offence of accused No.3 where contraband in commercial quantity is found.
48. Documents on record shows that on 10th December 2023 contraband weighing 174.500 Kgs is recovered at the instance of accused No.3. Police have conducted raids in godown of accused No.3 on basis of information received during interrogation of accused No.1. As per disclosure statement dt.10th December 2023 accused No.3, that godown was raided. Police have seized mobile phone of accused No.3 and when it was inspected, it was noticed that he has downloaded video from YouTube about manufacturing of

contraband. In his mobile phone, around 143 international phone numbers were found. It is alleged that accused No.3 brought clients for international market for drug and with help of accused No.4, exported the contraband in various countries.

49. As per prosecution, accused No.3 was in contact with other accused and assisted in search of premises for factory & incidental transactions. It is alleged that he has given information of chemicals & raw material to accused No.1, purchased raw material from the market and supplied the same in the factory. He had also given mixing formula to accused No.2 and instigated accused No.1 & 2, to manufacture the contraband.
50. So far as contention of accused No.3 regarding detention in jail without any judicial order of this Court and his illegal custody in contravention of section 36A of the NDPS Act r/w section 167 of the CrPC is concerned then there is no force in argument of Ld. advocate for accused No.3 as when accused No.3 is taken in judicial custody, same is extended time to time when he is produced on video conference.
51. If bail application of accused No.4 is considered then before this bail application, he had filed bail application which on 27th June 2024 was rejected on merit by this Court. That application was filed after filing of chargesheet. This bail application is filed when there is no change in circumstance. In this application, accused No.4 has relied upon various shipments bills. In order dt.24th June 2024, role of accused

No.4 as well as documents produced by him are considered in detail therefore, I do not feel it necessary to reproduce his role & contents of documents again in this order.

52. So far as argument about no progress in trial is considered then it would be necessary to mention here that this Court is burdened with criminal cases including cases of under trial prisoners. Old cases and cases of undertrial prisoners are on priority basis. Due to heavy work in each matter expected progress is not achieved but that does not mean that deliberately right of accused to speedy trial is violated. Sincere attempts are made to dealt with and ensure progress in each & every case on daily board irrespective of its stage.
53. As per prosecution, accused No.5 has antecedents & he came in contact with accused No.3 in jail. In the year 2018, one crime under NDPS Act is registered at Azad Nagar Police Station against him. It is alleged that he has assisted in supply of raw material for production of contraband. As per prosecution, accused No.5 does not hold any license for purchase of chemicals, still, he has purchased chemicals in his name and supplied the same to accuses No.1 & 3.
54. As per disclosure statement dt.17th December 2023 of accused No.5, laboratory equipment required for lab set up including glass equipment & chemicals were brought from Aarohi warehouse, Bhiwandi. It is alleged that accused No.5 has received ₹ 47 lakhs from accused No.3 and that amount was deposited in bank account of his friends which was

subsequently transferred in the bank account of accused No.1.

55. Whatever citations are given by Ld. advocates for accused, those citations have been considered at the time of passing this bail order and in order to avoid the length of this bail order, detailed discussion on citations is avoided. If citations produced as well as judicial pronouncements on the point of breach of mandatory provisions of section 42, 50 & 52A of the NDPS Act are considered, then law is very clear on these aspects. In present case, contraband is not found in personal search of accused therefore how section 50 of the NDPS Act is applicable is not clarified by the Ld. advocates for the accused.
56. While deciding a bail application, deep scrutiny of evidence is not expected and it is to see whether there is sufficient material against accused which shows prima facie case against them. While deciding bail application, Court cannot conduct mini trial by appreciating evidence to its logical end. If material on record is considered then, I am of the opinion that there is prima facie case against these accused and there is no breach of section 42, 50 & 52A of the NDPS Act. For the sake of argument, even if it is accepted that there is breach of mandatory provisions of the NDPS Act then that issue can be dealt with at the time of the trial and at this stage, I do not feel it proper to draw any inference at this early stage.
57. Contraband seized is in commercial quantity and rigor of section 37 of the NDPS Act will be applicable. Severe

punishment is prescribed for commercial quantity. If facts on record, allegations about involvement of accused, statements of witnesses, documents filed with charge sheet as well as nature & gravity of offence are considered then I am of the opinion that this is not a fit case to enlarge accused on bail. If accused are released on bail, then there is possibility of tampering the evidence and inducement to witnesses. For reasons stated above, I'm not inclined to grant bail to these accused. As a result, I pass the following order.

ORDER

1. Applications at exh.3, 17, 35 & 40 are rejected.
2. Registry is directed to inform accused about this order by e-mail.

(Application is disposed of accordingly)

Sd/-

Panvel
Date - 24/12/2024

(S. C. Shinde)
Addl. Sessions Judge,
Panvel, Dist.-Raigad.