

MHRG170024672024



ORDER BELOW EXH.05
IN SPECIAL (NDPS) CASE NO.207/2024
STATE EXCISE DEPARTMENT PANVEL C.R.NO.186/2024
PANKAJ ANANTA MOHITE -V/S- THE STATE OF
MAHARASHTRA
(PASSED ON 20th DAY OF FEBRUARY, 2025)

1. This application is on behalf of the applicant/accused No.5 – Pankaj Ananta Mohite vide Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to enlarge him on bail.
2. This application is strongly opposed on behalf of prosecution vide Exh.06.
3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether grounds are justified to release the applicant/accused No.5 on bail vide Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ?	Yes.

II.	What Order ?	The application is Allowed.
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REASONS

4. Perused application, say filed. Heard learned advocate for applicant/accused No.5 Shri.Sunil Rathod as well as learned A.P.P Shri.Y.S.Bhopi. Heard Excise Officer.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The present prosecution is based on raid effected upon receiving secret information to State Excise Department, Panvel. The raid is effected on 12.06.2024, at about 18.55 hours, at left side of Panvel-Mumbra Highway, infront of Star welding works, Sector-40,Taloja Pachnand and on 15.06.2024 at about 17.30 hours, at Old Pune-Mumbai Highway, near Gadhi (Kalundre) bridge of the river, Panvel, Dist-Raigad. The arrested accused No.1 and 2 were found in the possession of the Ganja weighing 414 kg for sale and other articles. The contraband is seized by the police in pursuance of the panchnama. Subsequently again contraband weighing 135 kg was found in Innova Car from the possession of accused No.3.

The accused were arrested.

6. The informant lodged the report on 12.06.2024 at State Excise Department Panvel. State Excise Department Panvel officer registered the Crime No.186/2024 Dated 12.06.2024 for the offence under Section 8(c), 20(b)(ii), (C), 29 of the Narcotics Drugs and Psychotropic Substances Act against accused No.1 and 2. Later the involvement of accused No.3, 4 and present applicant/accused No.5 is made out.

7. The accused/applicant was arrested on 02.07.2024 and produced before the Court on the same day. Initially the accused was remanded to police custody till 05.07.2024. Thereafter he was remanded to judicial custody as per order dated 05.07.2024. Presently, the applicant/accused is in Judicial Custody.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

8. The present prosecution is based on a raid effected in pursuance of specific intelligence received. The contraband was found in possession of accused No.1 - Arif Jakir Shaikh and accused No.2-Parvez Babuali Shaikh. The quantity of the contraband *Ganja* was weighing 414 kg. Subsequently the contraband *Ganja* weighing 135 kg was found in possession of

accused No.3 – Hanoj Engineer. In view of table appended to the NDPS Act, the contraband *Ganja* vide serial No.55 provides small quantity as 1000 gms and commercial quantity as 20 kg. Thus the said seized contraband is of commercial quantity.

9. Since it is commercial quantity of contraband as such, bar vide Section 37 of NDPS Act is applicable. The contraband was seized from the possession of accused No.1 to 3. The involvement of present applicant is made out in view of relevations made by arrested accused. The contraband was not seized from the possession of this applicant. The present applicant is owner of the seized Innova car wherein subsequent contraband of 135 kg was found. Therefore the present applicant is arrested.

10. The seized vehicle Innova was purchased by the applicant from one lady by name - Chaya Krishna Aadke. The name of applicant effected to the record of transport office, Kolhapur on 10.07.2024 as per the earlier agreement and sell transaction Dated 10.06.2024 with delivery note. Therefore the submission of learned advocate of applicant that this applicant was in judicial custody on the day of transfer of the vehicle Dated 10.07.2024 is unacceptable.

11. Now switching towards the involvement of this applicant, he is implicated in this crime in view of statement of arrested accused. This applicant was not found in possession of contraband. The call data record of the communication between this applicant and arrested accused is not placed on record. The investigating officer is in process of the said CDR.

12. Needless to mention, vide Section 41(2) of NDPS Act read with Section 5 of the Act empowers the state excise to book the crime, to conduct investigation and charge-sheeted to accused. Thus there is no bar as to the investigation by state excise. Further in the light of above reasoning since the contraband of commercial quantity was not seized from the possession of this applicant as such the pre-conditions appended to Section 37 of NDPS Act is negatived. The bar vide Section 37 of NDPS Act has no application to entertain the bail of this applicant.

13. The investigation of the crime is over and charge-sheet is filed. This applicant has criminal antecedent of like nature offence. However other parameters for bail of this applicant are made out hence the criminal antecedent of this applicant is no hurdle in grant of bail to him. The applicant is behind bar for more than seven months.

14. In the light of above reasoning, his further detention behind bar is unwarranted. The applicant has firm roots in the society as such, there is no chance of fleeing from justice. On all these grounds, the applicant deserves for bail. I answer Point No.I in the affirmative. With this, I pass following order ;

ORDER

1.	The application for regular bail vide Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 on behalf of the applicant/accused No.5 - Pankaj Ananta Mohite is allowed.
2.	Applicant/accused No.5 be released on bail on furnishing P.R. and S.B of Rs.50,000/- (Rs. Fifty Thousand) with one surety in the like amount on the following terms and conditions ;
i.	Applicant/accused No.5 shall assist to Investigating Officer whenever called under written intimation.
ii.	Applicant/accused No.5 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusations against him so as to dissuade them

	from disclosing such facts to the Court or to any police officer.
iii.	Applicant/accused No.5 shall not tamper prosecution evidence in any manner .
3.	A soft copy of this bail order be forwarded to the applicant/accused No.5 through Superintendent, Taloja Jail by e-mail for information in view of observation of Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) NO.4/2021, Dated 31.01.2023.
4.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 20.02.2025

(K.G. Paldewar)
 Additional Sessions Judge,
Panvel

Arguments heard on	31 st Day of January, 2025 and 06 th Day of February, 2025.
Judgment/order delivered on	20 th Day of February, 2025.
Dictated on	20 th Day of February, 2025.
Transcribed on	20 th Day of February, 2025.
Checked and signed on	20 th Day of February, 2025.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : K. N. Lokhande
Name of the Court : Additional Sessions Court,
Panvel
Date of Judgment/Order : 20.02.2025.
Judgment/Order signed on : 20.02.2025.
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 20.02.2025.