

MHRG170024672024



IN THE COURT OF SPECIAL JUDGE (NDPS), AT PANVEL,

DIST-RAIGAD.

(Before: Dinesh E. Kothalikar)

B. Com. LL.M.

COMMON ORDER BELOW EXHS. 16, 17 AND 24 IN SPECIAL

CASE NO.207/2024

The State of Maharashtra

...Prosecution

Verses.

Arif Jakir Shaikh & Ors.

...Accused

The learned S.P.P. for State: Mr. A. S. Thakur
The learned advocate for accused No.1 and 2: Mr. Gorakh Liman
The learned advocate for accused No.3 and 4: Mr. D. N. Shete

(DICTATED AND PRONOUNCED IN OPEN COURT ON

07.07.2025)

1. These are applications, by the applicants i.e. accused Nos.1 to 4 namely Arif Jakir Shaikh, Parvej Babuali Shaikh, Hanoj Hoshi Engineer and Diva Dashrath Umbare, for grant of bail under Section 483 of The Bharatiya Nagarik Suraksha

Sanhita, 2023 in connection with Crime No.186/2024 registered with State Excise Department, Panvel for the offence punishable under Section 8 (c), and Section 29 of the Narcotics, Drugs and Psychotropic Substance Act, 1985.

2. Learned advocate for accused Nos.1 and 2 Mr. Gorakh Liman has vehemently submitted that there is non compliance of Section 42 of the Act, as the officer who had received the information has failed to forward it to his superior and the same is fatal to the case of prosecution.
3. He would further submit that registration number of the vehicle mentioned in the information and the vehicle which was apprehended is not the same. Therefore, he would submit that doubt is created about the involvement of the vehicle in the crime.
4. According to Mr. Liman, since the spot panchanama, which was supposed to be prepared at the time of apprehension of the applicants, contains the Crime number, which was registered after lodging the report, doubt is created about the seizure and spot panchanama.
5. Learned advocate for the applicant has further submitted that the spot panchanama does not bear signature of the applicants and that it creates doubt about the case of prosecution.
6. Mr. Liman would further argue with vehemence that the certification as provided under Section 52-A-3 of the Act,

but the certificate appended to the inventory report is contrary to the provisions and as such it is claimed that there is non compliance of the mandatory provision.

7. Lastly, it is submitted that the grounds of arrest have not been communicated to the applicants and thus, it is claimed that the bar contemplated under Section 37 of the Act is not attracted and it is prayed to release the applicants on bail.
8. Mr. Liman has relied upon following judgments;
  - a. Boota Singh Vs State of Haryana 2021 SC 218.
  - b. Mohsin Kayyum Sayyed Vs State Of Maharashtra in Bail Application No.4252 of 2024.
  - c. Mohammad Sultan Mohammad Munavar Khan Vs The State of Maharashtra in Criminal Bail Application No.5036 of 2024.
  - d. Chandrabhan Janardhan Yadav Vs State of Maharashtra in Criminal Bail Application No.2254 of 2024.
  - e. Salim Iqbal Shaikh Vs The State of Maharashtra in Criminal Bail Application No.4120 of 2024.
  - f. Zaid Zahir Rana Vs The State of Maharashtra Criminal Bail Application No.1486 of 2023.
  - g. Kamaljit Singh @ Pappu Vs The State of Punjab in Criminal Appeal No.424 of 2009.
  - h. Sarafraj Abdul majid Ahmed Vs The State of Maharashtra in Bail Application No.4954 of 2024.
  - i. Ashish Kakkar Vs UT of Chandigarh in Criminal Appeal No.1518 of 2025.

- j. Ellena Kasakatira Vs The Union Of India in Bail Application No.3254 of 2025.
  - k. Rajaram Kadu Vs The State of Maharashtra Bail Application No.2108 of 2016 decided on 13<sup>th</sup> June 2017.
  - l. Sanobar Shafiq Khotal Vs State of Maharashtra in Bail Application No.3337 of 2021 decided on 14<sup>th</sup> October 2022.
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- 9. Taking the submissions of Mr. Liman, forward learned advocate Mr. Dhananjay Shete for accused Nos.3 and 4 has submitted that the investigation officer has seized and sealed the mobile handset of accused No.2 and therefore, the question of receiving call on his mobile handset on 15.06.2024 does not arise at all.
  - 10. He would further submit that the Muddemal was expected to be sent to the Forensic Science Laboratory within 48 hours, but there is inordinate delay in lodging the report. Thus, it is prayed for grant of bail.
  - 11. Per contra, learned SPP Mr. Thakur has submitted that the applicants were found carrying 414 kg Ganja worth Rs.1,03,50,000/- which is a commercial quantity and as such according to him, bar contemplated under Section 37 of the Act is attracted.
  - 12. According to him, the informant, upon receiving the information in respect of the transportation of the Ganja had given information about it to his superiors and as such

he would submit that there is compliance of Section 42 of the Act. He would further add that even if it is assumed that information was not forwarded to the superiors, in that case also since the contraband was not seized from the person of the accused persons, Section 42 of the Act would not be attracted. In support of the submission he has relied upon the judgment of Hon'ble Supreme Court in the case of **State, NCT of Delhi Vs. Malvinder Singh, 2007 AIR SCW 4301.**

13. The learned SPP Mr. Thakur would further submit that so far as the compliance of Section 52-A of the Act is concerned, it is revealed that the same has been certified by the learned Magistrate. Thus, he would submit that the applications are devoid of substance and accordingly, is is prayed to reject the applications. The learned SPP has relied upon the judgment of Hon'ble Supreme Court in the case of **Narcotics Control Bureau v. Kashif, 2024 SCC OnLine SC 3848.**
14. Upon perusal of the report dated 12.06.2024 it is found that informant Sub Inspector Mr. Ninad Nikam has alleged that on that day at about 15.00 hours he had received an information that accused Nos.1 and 2 would be coming by a car bearing No.MH-40-BJ-2354 for selling Ganja. According to him, he had given information to Mr. Patne and that it was transmitted to the Superintendent, Excise Department, Raigad by a phone call. According to him, the panchas were called and that after following due process

the team had proceeded for raid. According to the informant, at about 18.50 hours a four wheeler white colour Mahindra XUV 500 bearing registration No.MH40/BJ-2354 had come to the spot at which the team was waiting. According to the informant, since the movements of the persons from the car were found suspicious, they were apprehended on enquiry they had disclosed their names and that notice under Section 50 of the Act was given to those persons. They had given consent for taking physical search. According to the informant, at the time of personal search accused No.1 Aarif was found in possession of two mobile handsets whereas accused No.2 Parvej was found in possession of one mobile handset. On the point of seizure of the contraband, the informant has come with the contention that when search of the car was taken at that time it was found that it content 28 Nylon bags containing Ganja, upon enquiry accused Nos.1 and 2 have disclosed that it was Ganja. According to the informant, Excise Inspector Mr. Patne had asked him to take smell of the aforesaid article. It was found that it was having dark odour. When the Ganja was weighed it was found to the 414 kg. Accordingly, said muddemal was sealed by affixing paper slips containing signatures of Mr. Patne and the panchas. Thereafter notice under Section 52 of the Act was also given. Thereafter the informant has lodged the report.

15. Thereafter, during investigation while the data from the

mobile handset of accused No.2 Parvej was going to be analyzed at that time a call was received from the mobile connection No.7559408566, which was attended by Mr. Patne and that at that time the caller had disclosed that the goods were ready for loading in the white Innova Car and that he would bring the same between 5.00 to 6.00 p.m. at Panvel and that at that time Mr. Patne had posed that he was the uncle and asked the caller to bring the goods at Old Puna-Mumbai Road, Near Panchamukhi Hanuman Temple, Panvel. Accordingly, on 15/06/2024 at about 17.00 to 18.00 hours a trap was laid and that at that time pre-trap panchanama was drawn. According to the prosecution, thereafter at about 17.25 hours a white colour Innova Car bearing No.MH43/AJ-1350 had come to the said spot and that it was parked opposite to Government Rest House, Near Bridge on Old Pune-Mumbai Road and that at that time two persons got down from the said car and that one of them had made a call on the mobile connection No.9800262238, which was with Mr. Patne and that he had disclosed that they had reached opposite to Government Rest House, near the bridge. According to the prosecution, since the movement of those two persons were found to be suspicious they were apprehended at about 17.35 hours and that on inquiry they had disclosed their names i.e. accused Nos.3 and 4. According to the prosecution, notices under Section 50 were given to accused Nos.3 and 4. According to the prosecution, at the time of personal search of accused No.3 Hanoj, he was

found in possession of mobile handset of Hero Company whereas accused No.4 Diva was found in possession of a mobile handset of i-phone 11. According to the prosecution, at the time of search of the car bearing No.MH43/AJ-1350 it was found that there were 7 bags of Nylon containing 135kg Ganja. The same was seized and panchanama was drawn. Thereafter accused Nos.3 and 4 were arrested. After completing the formalities report under Section 173 of the Cr.P.C. has been submitted against accused Nos.1 to 4. Under this background, present applications have been submitted before this Court for grant of bail.

16. In the light of the fact that the prosecution has come with the case that the applicants were found in possession of large quantity of contraband, such seizure of commercial quantity assumes relevance at the stage of considering the bail application of the accused. Recording of findings as mandated in Section 37 is sine qua non for granting bail to the accused involved in the offences under the NDPS Act. For the sake of convenience Section 37 (1) is reproduced herein below:

"37. Offences to be cognizable and non bailable.-

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-
  - (a) every offence punishable under this Act shall be cognizable;

- (b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-
    - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
    - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
17. It is settled law that a plain and literal interpretation of the conditions under Section 37 would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.
18. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the guilt of the accused may be proved. That the satisfaction which courts are expected to record, is that the accused may not be guilty, is only prima

facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation.

19. So far as non compliance of Section 42 of the Act, is concerned, as stated in the case of **Malvindar Singh (cited supra)** Section 42 of the Act is not attracted when the search and seizure is made in a public place or in transit. The Hon'ble Supreme Court has categorically differentiated the situations which are covered under Section 42 and 43 of the Act by holding as under;

*Sections 42 and 43, therefore contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is not such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise.*

20. Admittedly, the prosecution has all along come with the case that the search and seizure in both the instances was made from the vehicle. It is not the case that the search and seizure was effected in a building, conveyance or enclosed place. Therefore, in my view the provision incorporated under Section 42 of the Act is not attracted and therefore the judgments relied upon by the learned advocate for the accused cannot be allowed to be pressed into service to seek discretion.
21. Much has been argued on the point that signatures of the accused persons were not obtained on the panchanama. In my view, said aspect of the matter cannot be looked into while deciding the bail application. Therefore, the submission made on behalf of the accused persons is liable to be turned down.
22. So far as the breach of Section 52-A-3 of the Act is concerned, the Hon'ble Supreme Court in a recent judgment in the case of **Kashif (Cited supra)** held that non-compliance with Section 52-A of NDPS Act will not entitle the accused to bail. The Apex Court held 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.”

23. No doubt, learned advocate for the applicants has made an attempt to submit that his contention is based upon the mode in which the certification has been recorded by the learned Magistrate and as such the judgment in question cannot be pressed into service. However, as stated supra, when the Hon'ble Supreme Court has categorically observed in point No.vi stated supra that 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 submission advanced by the learned advocate for the applicants cannot be relied upon.

24. An attempt has been made by learned advocate Mr. Shete for accused No.3 and 4 that they have been apprehended on the basis of the conversation that was intercepted on the mobile connection of accused No. 1, but said mobile handset was sealed at the time of seizure, therefore

according to Mr. Shete doubt is created about the case of prosecution. In the light of seizure panchanama, at this juncture it would be risky to accede to the submissions canvassed by Mr. Shete and therefore in my view it would not be sufficient to doubt the case of prosecution on the point of seizure of Ganja from accused Nos.3 and 4.

25. In the instant case, accused Nos.1 and 2 were apprehended while carrying 414 KG. Ganja worth Rs.1,03,50,000/- whereas accused Nos.3 and 4 were apprehended while carrying 135 KG Ganja worth Rs.33,75,000/- on 12.06.2024 and 15.06.2024 respectively. Thus, there is ample material on record to establish that they were found possessing commercial quantity of Ganja. The applicants have failed to give a legitimate justification for the possession of the same. As stated above, based on a reasonable reading and examination of the materials collected during investigation this court is unable to prima facie record satisfaction that the accused may not be guilty and as such the bar contemplated under Section 37 of the Act is attracted.
26. Additionally, reasons to reject the bail are that the total contraband around 549 kg worth Rs.1,37,25,000/- and was seized. Furthermore, when the seized contraband involves commercial quantity, in that case the offence is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not

be less than one lakh rupees. Although, said offence is not punishable with imprisonment for life or death, but the fact remains that such offence affects the interests of public at large and such crimes ruin lives of thousands of persons.

27. In the totality of the circumstances and considering the rival submissions, material on record and quantum of recovery being more than commercial quantity, this court, having regard to the bar under Section 37 of the NDPS Act, is not inclined to allow the applicants, privilege of bail. Consequently, following order is passed;

**:: ORDER ::**

Applications Exh.16, 17 and 24 are hereby rejected.

(Dictated and Pronounced in open Court.)

Place : Panvel.  
Date : 07<sup>th</sup> July, 2025

(Dinesh E. Kothalikar)  
Special Judge, NDPS Act.  
Panvel-Raigad.