

MHTH270013472024



ORDER BELOW EXH.33 IN NDPS SPECIAL CASE NO.108/2024

(Date : 08.09.2025)

1- After being arrested in connection with Crime No.189/2024 of APMC Police Station, District Thane for offences punishable under Sections 420, 467, 468, 471 of Indian Penal Code and Sections 8(c), 22(c), 29 of The Narcotic Drugs and Psychotropic Substances Act (hereinafter 'NDPS Act') and Rule 3(a) read with Rule 6(a) of The Passport (Entry Into India) Rules, 1950 and Section 14-A of The Foreigners Act, 1946, the **accused No.3 Edwin Obirah Udeirke, accused no.4 Frank Nzekwesi, accused no.9 Charles Tem Ozoronwapoaka and accused no.10 N Guessan Kouakou Alain** have applied for regular bail under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS').

2- Offences alleged against the applicants :-

Succinctly leveling a variety of allegations and narrating the sequence of events in all, the contents of the FIR disclose that upon secret credible information on 26.04.2024 at about 3.00 p.m. a raid was conducted by complying all statutory requirements at village Koprigaon and the applicants

and other co-accused persons were arrested with various quantities of contraband substances i.e. cocaine and MD-mephedrone. As the applicants and other co-accused appeared to be foreign nationals, they were apprised of their right under section 50 of NDPS Act in English. As they declined to avail the said right, they were searched in presence of panch witnesses. The said contraband was seized and samples were collected. After completion of investigation charge-sheet came to be filed against the applicants and others for the above said offences.

3- Contentions :-

a) The applicants have prayed to admit them to bail by contending the applicants have been falsely implicated in the case and nothing incriminating has been recovered from them, the applicants are innocent and have not committed any offence whatsoever, the documents relied upon by the prosecution create doubt about the genuineness of the search and seizure, the search was not carried out by authorized person under section 42 of NDPS Act, there is non-compliance of section 52-A of NDPS Act, there is no compliance of section 50 of NDPS Act, the applicants are sole earning member of their respective families, there is no likelihood of the applicants tampering with the prosecution evidence, the investigation of the case *qua* the applicants is over and no useful purpose would be served if they are denied bail.

b) The investigating officer has filed say (Exh.34) and contended that the F.I.R., panchnamas, contemporary documents prepared by the investigating officer and statements under Section 180 of BNSS specifically name the applicants and their role in the offences, the applicants will commit similar offence if released on bail and they will not cooperate with the process of law, therefore, the bail application be dismissed. He has further submitted that the applicants failed to produce any valid document authorizing them to enter into India.

4- Submissions :-

a) Learned counsel appearing for the applicants submits that after reading the FIR there are no grounds for believing that the applicants have committed any offence, custodial interrogation of the applicants is no more required in the backdrop of the fact that after initial police custody the applicants are eventually remanded to judicial custody, the magnitude of the offence and citizenship of the applicants cannot be a sole criterion for denying the bail to the applicants, the applicants are ready to abide by any bail condition, the applicants have never come to the adverse notice of any law enforcing authority, the applicants are not previously convicted and therefore they be released on bail. He has relied upon judgment of Single Bench of Hon'ble High Court in **Smt. Najma Abdul Shaikh vs. The State of Maharashtra** [order dated

23.10.2012 in Criminal Bail Application No.1311/2012], judgment of Single Bench of Hon'ble Bombay High Court in **Sunday Eziko Ezagwu vs. The State of Maharashtra [order dated 29.02.2024 in Bail Application No.3318/2024],** another judgment of Single Bench of Hon'ble Bombay High Court in **Abdul Kadir Ghogari vs. Union of India and another [order dated 15.09.2023 in Bail Application no.1646/2022]** to submit that in grave offences under NDPS Act the procedural safeguards provided under the statute require strict compliance and breach thereof frustrates the very object of the provisions and non-compliance of such statutory provisions the applicants are entitled for bail.

b) *Per contra*, learned APP has strongly resisted the application contending that the allegations against the applicants are serious, the contents of charge-sheet and material collected by investigating officer practically prove that the applicants are guilty of serious offence under NDPS Act, there is *prima facie* evidence to convict the applicants for the offence, the Court need not go into minute details of the incident and lacunae in the investigation while deciding the bail application, the applicants cannot claim innocence and ignorance in the facts and circumstances of the case, although there is no judgment of conviction of the applicants their conduct in coming to foreign country and involving in illegal activities itself is showing their criminal mindset and therefore the application be dismissed in the interest of justice.

5- Discussion :

a) After hearing learned counsels for both the sides and going through the record with their valuable assistance and after considering the matter deeply, the first submission of the applicants is that there is non-compliance of statutory provision under section 42 of NDPS Act in as much as the prosecution has not tendered any document showing that the secret information received by police head constable Mandol was taken down in writing, no extract of such secret information register / book is produced by the prosecution. However, the prosecution has filed extract of station diary entries dated 26.04.2024 wherein it is specifically mentioned that the information received at 10.00 a.m. about offence relating to the psychotropic substance / contraband substance was taken down in the secret information book at 10.10 a.m. Therefore, at this early stage of trial it cannot be concluded that there was non-compliance of the provision relating to taking down of the information given in section 42 of NDPS Act.

b) With regard to the second ground of non-compliance of section 50 of NDPS Act, the prosecution has filed on record separate notices issued to all the accused persons under the said provision in English script. It is evident from the said notices that the applicants and other co-accused persons refused to accept the said notices and they are signed by panch

witnesses. As per the learned A.P.P. the applicants and other-accused persons are well acquainted with statutory requirements under NDPS Act and they deliberately avoided to sign the notices to take benefit thereof to show that there was non-compliance of giving notice under section 50 of NDPS Act. According to learned counsel for the applicants, the case of **Abdul Kadri Ghogri** squarely covers above point wherein it is observed that section 50(1) of NDPS Act undisputedly casts duty on the empowered officer to apprise the suspect of his right to be searched before the nearest Magistrate or a gazetted officer and it is by way of a safeguard to check the misuse of power, to avoid harm to innocent person and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies. However, in the instant matter the notices given to the applicants and others clearly have signatures of the panchas who have also witnessed the fact that the applicants and other accused persons refused to sign the said notices. Therefore, benefit of the alleged non-compliance of section 50(1) of NDPS Act need not be given to the applicants.

c) Learned counsel for the applicants argues that there is difference in quantities of contraband in seizure panchnama dated 26.04.2024 and the inventory certificate dated 18.05.2024. In this context, it is to be noted that in the earlier bail orders it is clarified that in the inventory certificate the weight of the substance is calculated along with the seal

and therefore there is difference in the quantities of substances recovered from all accused persons when compared with that of seizure panchnama. Therefore, the applicants cannot take benefit of the said discrepancy.

d) The applicants are not Indian citizens. There is allegation of the prosecution that the applicants entered into India without valid passport or document. Moreover, there is possibility of non-cooperation with due process of law by running away from the country. Flight risk is associated with the applicants. There is a bar under section 37 of NDPS Act to grant bail application. Taking into consideration the totality of the facts and circumstances emanating from the record, the nature and gravity of the accusation, the reasons discussed herein above and without commenting further anything on merits, *lest* it may prejudice the case of either sides during the course of trial, applicants are not entitled for bail. Hence, following order.

ORDER

The application (Exh.33) is dismissed and disposed off.

Date : 08.09.2025

(C. V. Marathe)
Additional Sessions Judge, Belapur.

CERTIFICATE

I affirm that the contents of this PDF judgment /order are same word to word as per the original order.	
Name of the Stenographer	: M. P. Joshi, Steno Grade-1
Name of the Court	: District Judge-1 & Addl. Sessions Judge, Belapur
Date of the Judgment/Order	: 08.09.2025
Judgment /Order signed by the P.O. on	: 08.09.2025
Judgment/Order uploaded on	: ----

Visit ecourts.gov.in for updates or download mobile app “**eCourts Services**” from Android or iOS