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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

VASANT  
ANANDRAO  
IDHOL

CRIMINAL BAIL APPLICATION NO.4628 OF 2024

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Mr.Kynlo Magwada & Anr. ...Applicants  
V/s.  
State of Maharashtra & Anr. ..Respondents

Mr.Ashish Baraskar with Mr.Aavez Shaikh for the Applicants.

Ms.Rajeshree V. Newton, APP the State - Respondent.

Mr.Saket Ketkar, Special P.P. for Respondent No.2.

- **CORAM : R.M. JOSHI, J.**
- **DATE OF RESERVE : 18TH MARCH, 2026.**
- **DATE OF PRONOUNCEMENT : 24TH MARCH, 2026.**

**ORAL ORDER:-**

1. Applicants are seeking bail in connection with First Information Report No. 127/2021 for the offences punishable under Sections 8(C ) r/w 21(c), 22, 27(A), 23 r/w Sections 28 and 29 of Narcotic Drugs and Psychotropic Substances Act (for short “NDPS Act”) registered with Air Port Intelligence Unit, Mumbai.

2. On 09.12.2021, a specific intelligence was received by

Air Intelligent Unit, Chhatrapati Shivaji Maharaj International Airport, Mumbai that Applicants are arriving by Ethiopian airlines Flight No. 80-610. The intelligence further suggested that the said passengers might be carrying some narcotic/psychotropic substance covered under NDPS Act. Intelligence note was prepared and submitted to the higher authorities. An action was directed to be taken on the basis of the said intelligence received. Later on, in presence of panch witnesses, Applicant were apprehended and their trolley bags were searched. From the bag of Applicant No. 1, 16.464 kg of Heroin was found concealed in a bag identified as 'C' and 'D' whereas from the trolley bag of Applicant No. 2 identified as bags 'A' and 'B', there is a total recovery of 18.526 kg . Total weight of the seizure was 34.452 kg from both the Applicants. Authorised officer took further steps in compliance of the Act and on conclusion of the investigation, charge-sheet came to be filed before the competent Court.

3. It is the case of the Applicants that the samples which were allegedly taken were produced before the Metropolitan

Magistrate, 64<sup>th</sup> Court, Mumbai after expiry of 42 days and thus, there is non-compliance of Section 52(A) of the Act. It is claimed that the co-accused i.e. Accused Nos. 3 and 4 are already released on bail by the Special Court. It is further claimed that the Applicants are in custody for about a period of three years and the trial has not commenced. It is further claimed that the CA Report reveals that the contraband is a mixture of Caffeine, Codine and Morphine etc. and hence it cannot be said that the entire contraband is Heroin.

4. Learned Counsel for Applicants submits that though here is claim of the investigating agency of recovery of 34 kg of Heroin, according to him, there is no substance in the said claim. It is his submission that the entire quantity allegedly seized from the Applicant cannot be attributed independently/individually against them. It is also claimed that this is a case of mixing of contraband i.e. the contraband recovered from the Applicants individually. It is further claimed that CA report does not indicate that the entire material seized was Heroin and since it is mixture of Caffeine, Codine, Morphine etc. it cannot be said that

the substance which was allegedly seized at the instance of the Applicant was capable of mixture being homogeneous substance. It is further argued that notice under Section 50 was given only to accused No. 2 whereas no such notice is there on record indicating information of the right to the accused i.e. Applicant No. 1 to have search in presence of a Gazetted Officer or a Magistrate. It is further argued that even in respect of the notice of Applicant No. 2, there is no date mentioned thereupon which creates possibility of fabrication of evidence. It is further canvassed that this is a case wherein there is non-compliance of Section 52A of the Act as the sealed contraband was sent to the Magistrate after a period of 40 days. Finally, it is argued that after over a period of three years, the Applicants are in jail and inspite of framing of charge about 1 year back, the trial has not started and hence the trial is not likely to be concluded in reasonable period of time. For this purpose, the Applicant relied upon the judgment in case of Wajid Ali @ Tinku vs. State of Rajasthan, IA No.118177 of 2025 in Petition for Special Leave to Appeal (Criminal) No.7049 of 2025. Thus, on long incarceration

also, Applicants seek bail.

5. Learned Counsel appearing on behalf of Respondent No. 2 Union of India opposed the application. At the outset, it is contended that there is *prima facie* evidence on record to indicate that from both the Applicants, drug i.e. Heroin weighting 34.452 kg worth Rs. 2,41,16,40,000/- is recovered. It is argued that there is ample evidence on record to indicate that Applicants had conscious possession of huge quantity of narcotic drug Heroin. It is further argued that CA report indicates that the seized article is a contraband under NDPS Act. It is submitted that at this stage, the Court cannot go into the CA reports and to record any findings in support of the merits of the case. It is further argued that it would be a matter of trial wherein the prosecution will be in a position to explain the CA Report in the context/in the light of the entire evidence led before the Court. It is argued that considering the huge quantity of Heroin, this is not a case wherein there is reasonable ground to believe that the Applicants are not guilty of the offences charged against them. On these amongst other contentions,

learned Counsel seeks dismissal of the application.

6. There is no dispute about the fact that not only together but also independently, from conscious possession of Applicants, commercial quantity of contraband i.e. heroin has been seized. Thus, the embargo of Section 37 of the Act would certainly apply to the present case. In such circumstances, this Court is required to consider as to whether this is a case wherein it cannot be said that the Applicants have not committed the offence in question and on enlargement on bail, they would not commit similar offence.

7. Prima facie perusal of the record and the contents of the charge-sheet indicate that the intelligence note was prepared on 09.12.2021 specifically mentioning the names of the Applicants with suspicion that they may be carrying some narcotic substance. The said note was up before the superior authority and permission was obtained for taking further action. Thus, there is *prima facie* compliance of Section 42 of the Act.

8. With regard to compliance / non-compliance of Section 50 of the Act, a reference can be made to the judgment

of the Hon'ble Supreme Court in case of *Ranjan vs. State of Himachal Pradesh, 2023 SCC Online SC 1262*. The Hon'ble Apex Court, after considering the entire case law on the subject has summarised the requirements as envisaged by Section 50 of the Act. It is held that Section 50 provides both right as well as obligation. The person about to be searched has a right to have his search conducted in the presence of a Gazetted Officer or a Magistrate, if he so desires and it is obligation of police officer to inform such person of this right before proceeding to search the person of the suspect. It is further held that before conducting a search it must be communicated in clear terms though it need not be in writing and is permissible to convey orally that suspect has a right of being searched by a Gazetted Officer or a Magistrate. It also requires that in case of multiple persons to be searched, each one of them is to be individually communicated of the right and each must exercise waiver of the same in their own capacity.

9. Seizure panchanama indicates that after interception of the Applicants, they were specifically asked question as to

whether they are carrying any narcotic substance, which was replied by them in negative. Panchanama further records that the officers then informed the said two passengers i.e. Applicants in front of the panchas that they intend to examine their luggage and personal search in presence of panchas. It further records that the officers informed the Applicants individually that as per the provisions of NDPS Act, they have a right to be searched in front of a Gazetted Officer or a Judicial Magistrate. Both the Applicants did not seek search in presence of other Gazetted Officer or a Judicial Magistrate. *Prima facie* perusal of the said panchanama indicates that it is duly signed by the panch witnesses so also Applicants. Thus, at this stage this Court has no reason to accept the contention of learned Counsel for the Applicants that there is non-compliance of Section 50 of the act.

10. Panchanama further indicates that in a transparent air tight packets yellowish colour granules and powder was found therein. Seized articles were weighed independently and the weight was recorded separately by marking it from A1 to A10. Similar exercise was done in respect of the other seizure and the

articles were marked independently by mentioning weight against the same. Panchanama further reveals that the officers in presence of the panchas selected a packet randomly recovered from each bag and took small pinch of powder for testing in IONSCAN machine model No. 500 DT installed at CSMI Airport. The samples of the powder were tested individually in the said machine in presence of panchas by the officers. Reports generated by the said machine in front of the panchas and officers confirmed the presence of Heroin in the samples which were tested. Thereafter the officers emptied the powder and granules recovered from the packets i.e. bag No. A into a blue colour plastic bag having weight of 37 Gms. The said packet was sealed thereafter. Similar exercise has been done in respect of the granules and powder recovered from the packets from the other bags. Now question arises as to whether it is open for the concerned authority to mix such contraband articles into one packet. It would be relevant to refer to the rules framed in the year 2022 under NDPS Act. Rule 10 indicates that it is permissible for the authorities/police officers to mix

homogeneous substances into packets not exceeding 40 in number. This Court finds that the said rule since permits the authority to mix the homogeneous substance and since in the instant case the same has been done after due testing, there is no reason to hold non-compliance of the Rules of 2022. In any case the findings with regard to homogeneousness of seized contraband and C.A. report and its evaluation would be matter of trial. Needless to say that irregularity if any caused would be open for explanation during trial and acceptability or otherwise would be subject matter of decision of Trial Court.

11. Insofar as compliance of Section 52(A) of the Act is concerned, perusal of the said provision indicates that such provisions deals with regard to the disposal of the substance seized. The purpose of the said provision is to enable the investigating agency to dispose of such substances except for the samples secured. The said provision shows that the inventory is required to be sent to the concerned Magistrate at the earliest. The main/basic purpose of the said provision is that having regard to the hazardous nature, vulnerability to theft,

substitution, constraint of proper storage space or any other relevant consideration in respect of narcotic drugs, psychotropic substances, controlled substances shall as soon as may be after their seizure be disposed of by such officer and in such manner as the Government may from time to time determine. It is after destruction of the substance, during the course of trial, the inventory, photographs of drugs and list of samples drawn and certified by the Magistrate are considered as primary evidence in respect of such offence. Having regard to the purpose for which Section 52(A) has been introduced in the Act, this Court finds no substance in the contention of learned Counsel for the Applicants that for the reason inventory has been sent to the Magistrate after 40 days, it becomes a ground for grant of bail. Needless to say that these issues are triable in nature and it is open for the prosecution to explain the delay. Moreover, there is prima facie evidence on record to show that parcels/seized articles were sent to CA in sealed condition as recorded in CA report. Thus, at least at this stage, there is no reason to accept the contention of the Applicants with regard to the possibility of tampering of

evidence.

12. At this stage, it would be relevant to consider the judgment of Hon'ble Supreme Court in case of *NCB vs. Kashid passed in Criminal Appeal No. 5544/2024.* The Hon'ble Supreme Court in paragraph 39 has summarised discussion of Section 52A of the Act which reads thus :

“(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.

(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.”

It is thus held that any lapse or delay in compliance of Section 52(A) in itself would neither vitiate the trial nor would entitle the accused to be released on bail.

13. Insofar as CA Reports are concerned, the result of examination reads as “the exhibits were analysed by colour test, Thin Layer Chromatography (TLC) and as Chromatography –

Mass Spectrometric (GC-MS) methods, based on the above methods the results obtained are given below :  
Diacetylmorphine (Heroin), 6 – monoacetylmorphine, Acetylcodeine and Caffeine have been detected in Exhibits : A1-S, B1-S, C1-S and D1-S. Thus, the mixing has been done of the samples drawn from each bag after testing the same, atleast at this stage it cannot be said that any error was committed by the authorised officer in mixing the same. Suffice it to say that a total drug Heroin weighing 34.452 kg has been recovered at the instance of both accused.

14. Having regard to the huge quantity of heroin, seized and nature of evidence against Applicant, it is not a fit case for grant of bail as this Court has no reasonable grounds for believing that the Applicants are not guilty for the offences charged against them and that they are not likely to commence or commit any offence if released on bail. This observation is inevitable in view of the material evidence on record which indicates that the Applicants were in conscious possession of contraband articles and the said articles were obtained from a

common person and this could be considered prima facie as a case of conspiracy by all accused persons. In case of *State of Madhya Pradesh vs. Kajad, 2001(7) SCC 673* with regard to principles governing bail in NDPS cases, issue of long incarceration, it is observed that “A bare perusal of Section 37 of the Act leaves no doubt in the mind of the Court that a person accused of an offence punishable for a term of imprisonment of 5 years or more shall generally be not released on bail. Negation of bail is a rule and its grant is an exception under Sub-Clause (ii) of Clause B of Section 37(1). For granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence” with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. A liberal approach in the matter of bail under

the Act is uncalled for.

15. Similarly, in case of NCB vs. Mohit Aggrawal, (2022) 8 SCC 374, it is held that the length of the period of his custody or the fact that the charge-sheet has been filed and trial has commenced are, by themselves not considerations that can be treated as persuasive ground for grant of relief to the Respondent under Section 37 of the NDPS Act.

16. Needless to say that long incarceration by itself does not become a ground for grant of bail considering prima facie evidence against the applicant showing their involvement in the serious crime of transporting heroin weighing 34.452 kg.

17. Hence application deserves to be dismissed and stand dismissed accordingly. Learned trial court however is requested to expedite the trial and conclude the same at the earliest in view of the fact that the Applicants are behind bar for over a period of three years by now.

*(R.M. JOSHI, J.)*