

**IN THE COURT OF THE SPECIAL JUDGE FOR N.D.P.S. CASES**

**AT GREATER MUMBAI**

**COMMON ORDER**

**IN**

**N.D.P.S. BAIL APPLICATIONS NO. 2573 OF 2021 & 2575 OF 2021**

**IN**

**NCB/MZU.CR-94/2021**

**1. Nupur Ajay Satija**

Age : 29 years,  
R/o : 2/23, DLF Phase-1,  
Gurgaon, Haryana 122002

**2. Gomit Pradeep Chopra**

Age :  
R/o : B-35, Surajmal Vihar,  
New Delhi – 110 092.

**... Applicants/ Accused no.8 & 7**

**V/s.**

**The Union of India**

(Through the Intelligence Officer,  
Narcotics Control Bureau,  
Mumbai Zonal Unit, Mumbai)

**... Respondent**

**Appearance :-**

Mr. Ayaz Khan, Adv. for applicant/accused no.8.  
Mr. Kushal More, Adv. for applicant/accused no.7.  
SPP Shri Chimakar & SPP Sethana with Adv. Ruju Thakker,  
Adv. Tanay Mandot and Adv. Pranav Gohil for respondent.

**CORAM : HIS HONOUR THE SPECIAL JUDGE  
V. V. PATIL (C.R.NO.44)**

**DATE : 30<sup>th</sup> October, 2021**

**ORDER**

The present applications for grant of bail under section 439 of Cr.P C. are filed by **applicant/accused no.8 Nupur Satija** and **applicant/accused no.7 Gomit Pradeep Chopra**, who are arrested by officers of

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respondent on 3/10/2021 for violation of offences under sections 8(c) r/w 22(b), 27, 28 and 29 of Narcotics Drugs and Psychotropic Substances Act, 1985 ( herein after referred to as 'NDPS Act, 1985') in connection with C.R. No. 94/2021.

2. It is the case of prosecution that on specific information received, the officers of NCB effected seizure of 13 grams of Cocaine, 5 grams of Mephedrone (MD), 21 grams of Charas and 22 Pills of MDMA (Ecstasy) and 1,33,000/- INR at International Cruise Terminal, Green Gate, Mumbai under panchanama dtd. 2.10.2021. Pursuant to said seizure, the respondent registered a case under C. R. No. 94/2021. On initial investigation total 8 persons were arrested. Thereafter in a follow up connection accused nos. 9 to 12 were summoned u/sec. 67 of NDPS Act and they were arrested on 4.10.2021. Further in a follow up action accused nos. 13 to 16 came to be arrested on 5.10.2021.

3. Now, the applicant/accused no.8 Nupur Satija sought bail on the grounds that she was arrested for intermediate quantity of MDMA for possession and consumption. Hence bar under section 37 of NDPS Act is not attracted to her case. The case of prosecution by itself reflects that the applicant is a consumer of contraband. She was given the same for her consumption by co-accused who has already been arrested by the prosecution. The alleged seizure from the Room no. 3603 is an illegal seizure and arrest of applicant is illegal arrest. This is in violation of provisions of the NDPS Act. The alleged seizure is from a Room and not from the personal possession of the applicant. The applicant is a lady and has no criminal antecedent. She undertakes to abide by the conditions laid down by this Court. Hence, she prayed for releasing her on bail.

4. The applicant/accused no.7 Gomit Chopra sought bail on the grounds that he has been falsely implicated in this case and he has no connection with the alleged drug trafficking network. He was found in possession of 4 pills of MDMA (ecstasy), total weighing 2.8 grams and 3 gms. of Cocaine of intermediate quantity and cash amount of Rs. 93,000/-. Hence bar under Section 37 of NDPS Act is not applicable to his case. As per the case of prosecution itself applicant is a consumer and not a peddler. The possession of alleged contraband recovered from the applicant is individual possession and it cannot be connected with recovery of co-accused. He claimed that he was illegally detained. Further more, there was non-compliance of Sec. 50 of NDPS Act. There are contradictions and discrepancies in the remand application and panchanama. The applicant has no criminal antecedent. He undertakes to abide by the conditions laid down by this Court. Hence, he prayed for releasing him on bail.

5. Respondent strongly opposed the application by filing reply. It is contended that all the persons arrested in C.R. No. 94 of 2021 are inextricably connected with each other insofar as their acts and omissions constituting offences under NDPS Act is concerned. As per case of the prosecution, accused no.1 used to procure contraband from accused no. 2 and the sources connected to accused no. 2 from whose possession 6 gms. of Charas was recovered. There is material on record so far to show that accused no. 1 was in touch with some persons abroad who appeared to be a part of an international drug network for illicit procurement of drugs. The investigation revealed that the supplier to accused no.1 i.e. accused no. 17 has been arrested with 2.6 gms. of Ganja. Further supplier of contraband to accused no. 2 namely Shivraj Harijan i.e. accused no. 19 has also been intercepted and arrested with

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62 gms. of Charas. It is so far apparent that accused no. 17 and 19 supplied Charas/Ganja to accused no. 1 and 2. The investigation further revealed that accused no. 3 was arrested on 3.10.2021 with 5 grams of Hashish from her conscious possession. Further, 2 subsequent arrests of two Nigerian nationals revealed that they were suppliers of MDMA pills to accused no. 5 Mohak Jaiswal and said Mohak Jaiswal further supplied intermediate quantity to accused no. 6, Ishmmet and accused no. 8, Nupur. Investigation further revealed that supplier of MD to accused no.5 Mohak Jaiswal was accused no. 9 Abdul Qadir.

6. It is further contention of the prosecution that said accused no. 5 Mohak Jaiswal purchased ecstasy pills from accused number 9 Abdul Qadir who was apprehended with 2.5 gms. of ecstasy and 54.3 gms. of commercial quantity of Mephedrone from his conscious possession. Further prosecution apprehended accused Shreyas Nair with 2 gms. of Charas from his conscious possession and accused Manish Rajgarhia with 2.4 gms. of Ganja from his conscious possession and accused Avin Sahu with no recovery. Further prosecution arrested four other persons who were the organizers of the said event. Prima-facie material shows that ingredients under section 28 and 29 are clearly made out.

7. It is specifically submitted that intermediate quantity as admitted by the applicant/accused no.8 cannot be brushed aside casually. The applicant/accused no.8 failed to discharge the legal burden/onus which exclusively on her to show that she is a mere consumer. A bare perusal of panchanama makes it clear that 4 pills of Ecstasy weighing 1.59 grams was concealed in sanitary pads with white adhesive tape which was wrapped on all sanitary pads. Thus, her culpable mental steps as stipulated under section 35 of the Act is clear and evident. Hence

respondent prayed for rejection of the application.

8. It is further specifically submitted that so far as accused no.7 is concerned, intermediate quantity was recovered from his conscious possession which cannot be brushed aside easily. His culpable mental state under sec. 35 of the Act is also clearly established. There is no illegal detention as alleged by accused no.7. Provisions of Sec. 42 & 50 of NDPS Act are duly complied with. Hence his bail application is liable to be rejected.

9. Perused applications and say. Heard Ld. Advocates for the applicants and Ld. SPP for the respondent at length. The points for determination along with my findings thereon are as under :-

Sr. No.	POINTS	FINDINGS
1.	Whether the applicants/accused nos. 8 and 7 are entitled to be released on bail?	Yes
2.	What order?	As per final order

### REASONS

#### **As to point No.1:**

10. It is argued by Ld. Adv. for applicant/accused no.8 that as per the case of prosecution itself, applicant/accused no.8 was found with intermediate quantity of 4 pills of Ecstasy total weighing 1.59 grams which is non-commercial quantity and therefore, rigors of section 37 of NDPS Act would not be applicable. Further there is non-compliance of Section 46 of Cr. P.C. The panchanama was not carried out by Authorised Officer prescribed under the Act, hence, search and seizure

itself is illegal. Moreover, the applicant who is lady is arrested by male officer which is against the mandatory provisions of NDPS Act. Hence on all the above grounds applicant/accused no.8 is entitled to be released on bail.

11. In support of his submissions, he relied upon following citations-

1. Ragini Dwivedi @ Gini @ Rags Vs. State of Karnataka, 2021 SCC Online SC 174
2. Dheeren Kumar Jaina v/s. Union of India in Cri. Appeal No. 965/2021.
3. Balchandra Sirodkar V/s Customs in Cri. M.A. 199/06 & 201/06.
4. Ruksana Kazi V/s. State of Maharashtra in Cri. B.A. 498/2011.
5. Sk. Sohil V/s State of Maharashtra in Cri. B.A. 811/2018.
6. Ajaz Mohd Khan V/s. State of Maharashtra in B.A. 3022/18.
7. NCB Jodhpur V/s Murlidhar Soni & Ors. In Cri. Appeal 1048/97.
8. Harsh Shah Vs. State of Maharashtra in Bail Application number 2471 of 2021 (Bombay High Court)
9. Basheer Alias N.P Basheer V. State of Kerala (2004) 3 Supreme Court Cases 609
10. Nikesh Shah Vs. Union of India and Other (2018) 11 Supreme Court cases 1
11. Aleksander Kurganov V/S State of Anr. in Cri. B.A. (F) 37/2021.
12. Sarija Banu V/s State through inspector of police in Cri. Appeal No.302/2004.
13. Central Govt. Notification on 42(1) of the NDPS Act.
14. Dilkush G. Sinai V/s State of Goa in Cri. Appeal No. 28/1994.
15. Najma Abdul Shaikh V/s State of Maharashtra in Cri. B.A. 1311/2012.
16. Emeka Charles V/s State of Maharashtra in Cri. B.A. No. 842/13.
17. Henna Shah V/s State of Maharashtra in B.A. No. 1051/2016.
18. Rakesh Hilaria @ Dhobi V/s State of Maharashtra in Cri. B.A. 362/19.
19. Sarath V/s State of Kerala (High Court Kerla) in B.A. No. 4002/21.

12. It is argued by Ld. Adv. for accused no.7 that as per case of prosecution itself applicant was found with intermediate quantity of contraband and therefore stringent provisions of Sec. 37 of NDPS Act would not apply. Moreover, accused no.7 has no concern with any

other accused or the contraband recovered from any other accused. The possession of contraband is individual possession which is meant for consumption only. Hence there is no bar to grant bail to accused.

13. In support of his submissions, Ld. Adv. for applicant/accused no.7 relied upon following citations :

1. Beckodan Rahiman V/s. State of Kerala, AIR 2011 SC 77.
2. Vijaysinh Jadeja V/s. State of Gujarat, AIR 2011 SC 77.
3. State of Rajasthan V/s. Parmanand, 2014 AIR SCW 1578.
4. Lawarance D'Souza V/s. State of Maharashtra & Anr. 1992 CriLJ 399.
5. Harsh Shah V/s. State of Maharashtra in Cri. B.A. 2471/2021.
6. Sanjay Bipin Shroff V/s. State of Maharashtra & Anr. in Cri. BA 3023/18.
7. Himmatsingh Rajput V/s. State of Maharashtra in Cri. B.A. 1649/18.
8. Birbal Prasad V/s. State of Bihar (2018) 11SCC 488.
9. Sheikh Imran V/s. State of Maharashtra in Cri. B.A. 105/2021.
10. Shivaji Shelke V/s. State of Maharashtra in Cri. B.A. 497/2021.
11. Jagan Chavan V/s. State of Maharashtra 2014 ALL MR (Cri.) 4589.
12. Raju V/s. State of Maharashtra, 2002(4) MhLJ 625.
13. Amarsingh Barot V/s. State of gujarat, (2005) 7 SCC 550.
14. Dheeren Kumar Jaina v/s. Union of India in Cri. Appeal No. 965/2021.
15. Sangeeta Gaikwad V/s. State of Maharashtra in Cri. Appln. No. 2597/06.
16. Iqbal Shaikh V/s. State of Maharashtra in Cri. B.A. 1633/2013.
17. Roshan Singh V/s. State of Maharashtra, in BA 498/2011.
18. Ruksana Kazi V/s. State of Maharashtra in Cri. B.A. 498/2011.
19. Ragini Dwivedi v/s. State of Karnataka, 2021 SCC OnLine SC 174.

14. Per contra, it is argued by Ld. SPP appearing for the respondent that on the basis of credible information received, officers of the respondent, effected seizure of certain contraband at International Cruise Terminal Green Gate Mumbai from the accused nos. 1 to 8 and on the basis of information received in their statement further follow up action was taken and other accused persons were apprehended from whom small, intermediate and commercial quantity of contraband was

seized. All the accused form part of drug chain and they are indulging in illicit trafficking. They have acted in conspiracy in commission of offences. Hence, section 29 is invoked. Hence, their bail applications be rejected.

15. In support of his submissions, Ld. SPP relied upon following citations:

1. R. Makeswaran V/s. The State, MANU/TN/2909/2015.
2. Naginlal Nandlal V/s. State of Gujarat, MANU/GJ/0140/1961.
3. Rashid Khan & Ors. V/s. The State, MANU/RH/0178/1993.
4. Union of India V/s. Ram Samujh and Ors., MANU/SC/0530/1999.
5. Union of India V/s. Ratan Mallik, MANU/SC/0076/2009.
6. Durand Didier V/s. Chief Secretary, Union Territory of Goa, MANU/SC/0173/1989.
7. Union of India and Ors. V/s. Bharat Chaudhary & Ors., MANU/TN/5234/2021.
8. Dilbagh Khan & Ors. V/s. State of Punjab, MANU/PH/0686/2021.
9. Nandu Subhash Varpe V/s. The State of Maharashtra in B.A. 666/2021.
10. Union of India (NCB) V/s. Md. Nawaz Khan in Cri. Appeal No. 1043/2021.
11. Kerry Kelvin Mendes V/s. NCB in BA Exh.4 in Spl. Case 624/21.
12. Ikechukwu C. Stanley & Ors. V/s. NCB, MANU/DE/2955/2018.
13. Amarsingh R. Barot V/s. State of Gujarat, MANU/SC/0569/2005.
14. Ishika V/s. State, MANU/DE/0383/2021.
15. Abdel Basit Parihar V/s. Union of India, 2020 SCC OnLine Bom. 8032.
16. Anil Sharma V/s. State in BA 127/19 & Cri. M.As. 5620/19 & 10963-64/19.
17. Khet Singh V/s. Union of India, MANU/SC/0205/2002.
18. Arya Chelatt V/s. State of Kerala, MANU/KE/1436/2021.
19. Virupakshappa Gouda & Anr. V/s. State of Karnataka & Anr. In Cri. Appeal No. 601/17.
20. Satyaboina Chandrasekhar V/s. State of Telangana in Cri. P. No. 3930/18 and Kesireddy Nikhil Reddy V/s. State of Telangana in Cri. P. No. 5050/18.
21. State of Rajasthan V/s. Babu Lal @ Jagdish Gwala in S.B. Crml. Leave to Appeal No. 211/19.



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16. Perusal of NCB papers and panchanama reveals that secrete information was received from reliable source that passenger who has room no. 3603 is involved in drug peddling/dealing and her name is Nupur Satija. Hence, said room on the cruise was searched in presence of two panch witnesses, one of which was female panch under inspection of Intelligence Officer and it was found during search four sanitary pads of 'Sofy' Marked were found wrapped with white colour adhesive tape. Hence, all the 4 sanitary pads were opened by removing adhesive tapes and found that each sanitary pad is consisting of one green colour tablet purported to be Ecstasy (MDMA), total weighing 1.59 grams which came to be seized under panchanama.

17. It is argued by Ld. Advocate for the applicant that the alleged panchanama is not carried out as per the provisions of the NDPS Act. Perusal of panchanama reveals that the search of the room of accused was taken as per instructions of Intelligence Officer by female panch witness who is not authorized by the Act to effect the search and seizure. It is further argued that timing of panchanama shows that panchanama was started at 19.40 hrs. and was completed at 21.50 hours i.e after sunset and before sunrise which is also against the provisions of the Act. Furthermore there is non-compliance of section 46 of Cr. P.C. Panchanama shows that accused no.8 was allowed for night rest and at morning she was brought at NCB office. Memo of arrest shows that she was arrested on 3.10.2021 at 17.40 hrs. Thus, it can be gathered that she was actually arrested on 2.10.2021.

18. Further Ld. Adv. for applicant relied upon citation in case of **Aleksandar Kurganov of Hon'ble Bombay High Court, bench at Goa**, wherein it was held that arrest of lady accused stand vitiated and earn a

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release on bail if the police violate section 46 of Cr. PC. Relying upon said authority, it is argued that applicant was arrested by male officer during night time and that too without seeking permission of Judicial Magistrate first class. Hence her arrest is illegal.

19. It is also submitted on behalf of accused no.8 that her search was itself illegal as it was not taken by authorized police officer. Ld. Adv. for accused relied upon 'Notification empowering the officers of various departments like Customs, Central Excise, Narcotics, DRI, NCB, etc.' issued by Central Govt. vide Notification no. 6/85 F. No. 664/51/85 dated 4.11.1985 which reveals that officers of and above the rank of Inspector in the department of Narcotics Control Bureau are empowered to exercise powers and perform the duties specified in Section 42.

20. In the case at hand admittedly, personal search of accused as well as search of room of accused was taken by female panch witness. Admittedly, there was no lady officer present and no panchanama was carried out by person authorised for that purpose.

21. In authority of **Dilkush Sinai (Supra)** search was taken by panch witnesses, though in the presence of empowered police officer. It was held by Division Bench that there was no compliance of Sec. 42 because the search was not taken by an empowered police officer.

22. Similarly in the cases of **Henna Shah (Supra)**, **Rakesh Hiloria & Emeka Charles (Supra)** it was held that when search is taken by person who is not empowered officer, there is a clear breach of section 42 of NDPS Act and hence accused is entitled to bail.

23. In the present case, as discussed above, search is taken by female panch who is not an empowered officer to effect search and therefore there is breach of section 42 of NDPS Act. Therefore, in view of observations made by Hon'ble High Court in above citations, present applicant/accused is entitled to grant of bail on that ground.

24. So far as claim of accused no.7 about non-compliance of Sec. 50 is concerned, as pointed out by Ld. SPP that accused was informed about his legal right to be searched by a Gazetted officer or his personal search to be taken before a Ld. Magistrate. Accused was also issued notice under sec. 50 of the Act. Separate appraisal was given to each accused in writing to which accused denied. Thus, it can be gathered that Sec. 50 of NDPS Act is duly complied with.

25. Accused no.7 also claimed that he was illegally detained by the NCB officers. It was submitted on behalf of respondent that arrest memo bears all details being date, time, etc. of arrest. Panchanama was drawn which also bears signature of accused. Accused has not disputed his signature on panchanama. After following due procedure of Law, applicant was produced before Ld. Magistrate on 4.10.2021. Accused no.7 had raised same ground before Magistrate, who unequivocally held that there is no merit in the applicant's illegal arrest/detention. So far as this ground is concerned, considering the rival submissions, prima-facie it does not appear that there is illegal detention of accused as claimed.

26. Next submission made on behalf of applicants is that accused no.7 was found with intermediate quantity of 4 Ecstasy tablets (MDMA) & 3 gms. of cocaine which was meant for consumption purpose and it

was not for sale, purchase or for any other purpose and rigors of Sec.37 would not apply and there is no bar to grant bail. It is also argued that though prosecution invoked section 29 of NDPS Act, there is nothing to show nexus of present applicants with other accused.

27. It is submitted by Ld. SPP that there is incriminating material in the form of Whatsapp chat between accused no.7 and accused no.8 which show the nexus of the accused no.7 and accused no. 8. Thus it can be gathered that they were in contact with each other. Whats app chats were shown to the Court during the course of the argument. It is submitted that from whats app chats it is can be gathered that accused no. 7 and accused no.8 acted in conspiracy with each other for committing offence under the NDPS Act. Hence Section 29 of the NDPS Act is applicable.

28. Whereas it is submitted on behalf of the applicants that merely because there are certain chats between accused no.7 and accused no.8 it cannot be said that there was conspiracy between them. Admittedly applicants are found with intermediate quantity of contraband. Assuming it to be true, it is at the most meant for consumption and not for sale, purchase or any other use. As per case of the prosecution itself applicants possessed it for purpose of enjoying and for consumption. Therefore section 27(a) of NDPS Act only applicable which attracts punishment upto 1 year only. Section 29 of NDPS Act will not be applicable.

29. Though prosecution relied upon whats app chats, it can be seen that whats app chats are regarding only consumption of contraband and not regarding sell, purchase or for any other use of contraband.

Therefore I find substance in the arguments advanced on behalf of applicants that on the basis of what appears at the most it can be said that applicants are consumers of contraband.

30. It is argued on behalf of the applicants that according to prosecution all accused acted in conspiracy with each other. However Hon'ble High Court pleased to reject the claim of the prosecution and pleased to grant bail to accused no. 1, 2 and 3. Hence present applicants are also entitled to be released on bail on the ground of parity.

31. I find substance in the argument advanced on behalf of the applicants. So far as submissions of Ld. SPP regarding conspiracy is concerned, aspect of proving the conspiracy which deals with depth is required to be considered only at the time of trial. But prima facie it needs be shown that there is case of conspiracy and abetment by the prosecution. However considering the material placed on record it can not be said that prima-facie there is conspiracy and abetment as alleged by the prosecution. Hence section 29 of NDPS Act is not applicable. Hence fetters under section 37 of NDPS Act would not apply. Since Hon'ble High Court pleased to grant bail to accused no.1 to 3, present applicants are also entitled to bail on the ground of parity.

32. So far as accused no.8 is concerned, as discussed above, she is also entitled to bail on the ground of illegal seizure and breach of provisions of Sec. 42 of NDPS Act. So far as ground of illegal arrest is concerned, as argued by Ld. SPP, that aspect needs to be decided at the trial after giving opportunity to the prosecution to produce evidence. Even otherwise, as held above, accused no.8 is entitled to grant of bail.

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Hence I do not think it necessary to go into the details of this aspect at this stage.

33. As argued on behalf of applicants, the applicants are permanent residents of Haryana and New Delhi respectively and they are ready to abide by all the conditions imposed by this Court. They have no criminal antecedents as to their discredit. They have deep roots in the Society and they are not likely to abscond and not likely to flee from justice. Hence they are entitled to grant of bail.

34. For all the above reasons, I hold that applications deserve to be allowed. Hence I answer point no.1 in the affirmative and proceed to pass following order :

#### ORDER

1. Bail Applications No. 2573/2021 and 2575/2021 are hereby allowed.
2. **Applicant/accused no.8 Nupur Ajay Satija and applicant/accused no.7 Gomit Pradeep Chopra** be released in C. R. No.94/2021 on executing P. R. Bonds of Rs. 50,000/- each (Rs. Fifty Thousand only) with one or more sureties in the like amount.
3. Applicants/accused shall attend the office of NCB Mumbai Zonal Unit on every Monday in between 1.00 pm to 4.00 pm till filing of charge-sheet.
4. Applicants/accused and their sureties shall provide their respective mobile numbers and correct address of residence alongwith names of two relatives with their mobile numbers and addresses.
5. Applicants/accused shall produce the proof of their identity and proof of residence at the time of the executing the bail bonds.

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6. Applicants/accused shall not tamper with prosecution witnesses/evidence in any manner and co-operate in early disposal of trial.
7. Applicants/accused shall not commit similar offence while on bail.
8. Accordingly, Bail Applications no. 2573/2021 & 2575/2021 are disposed off.

**(V. V. PATIL)**  
Special Judge (N.D.P.S.),  
City Civil & Sessions Court,  
Gr. Mumbai.

Date : 30.10.2021

Dictated on : 30.10.2021  
Transcribed on : 11.11.2021  
Signed on : 12.11.2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
12.11.2021	4.30 p.m.	Mrs. S. W. Tuscano
Name of the Judge		HHJ Shri V. V. Patil (CR No.44)
Date of Pronouncement of Judgment/Order.		30.10.2021
Judgment/order signed by P.O. on		12.11.2021
Judgment/order uploaded on		12.11.2021