



Suchitra

## IN THE HIGH COURT OF BOMBAY AT GOA

### CRIMINAL APPLICATION (BAIL) NO.53 OF 2025

**IBRAHIM BADUSHA**

S/o Hokimsha, Age: 26 years,  
 R/o near Lake Short Hospital,  
 Pallipparambu House, Nettoor,  
 Kerala – 682040, presently  
 Lodged in Judicial custody,  
 Modern Central Jail, Colvale, Goa.

... Applicant.

*Versus*

**UNION OF INDIA, (through the  
 Inspector Narcotic Control Bureau,  
 (NCB Goa), Goa Zonal Unit, Goa.**

... Respondent.

Ms Sana Raees Khan along with Mr Kautuk Raikar and Mr Digaj Bene and Ms Neha Balani, Advocates for the Applicant.

Mr. Somnath Karpe, Central Government Standing Counsel along with Adv. Ms Samiksha Vaigankar and Adv. Mr Anand Shirodkar.

**CORAM:                   VALMIKI MENEZES, J.**

**Reserved on :           10<sup>th</sup> June, 2025**

**Pronounced on :       14<sup>th</sup> August, 2025**

#### **P.C:**

1. Registry to waive objections and register the matter.
  
2. This is an Application for bail filed by the Applicant under

Section 483 of the Bharatiya Nagarik Suraksha Sanhita, seeking bail in Crime No. 06/2024 registered with the NCB Goa Zonal Unit on 19.08.2024 for alleged offences punishable under Section 8(c) read with Sections 20(b)(ii)(B), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”).

## **CONTENTS OF THE COMPLAINT AND THE CASE OF THE PROSECUTION**

3. (A) It is the case of the prosecution that on 19.08.2024, based on information received from the Railway Police Force regarding the interception of one Tharik K. T. at Thivim Railway Station, who allegedly admitted to carrying Charas/Hashish in his bag, a complaint was lodged on the same day, i.e., 19.08.2024. Pursuant to this, an FIR was registered on the same date, naming Tharik K. T. (Accused No. 1), Ibrahim Badusha (Accused No. 2/Applicant), Dheeraj Mathew (Accused No. 3), and Om Prakash (Accused No. 4) as the accused persons. The Applicant was arrested at 20:40 hours on 19.08.2024. Accused No. 1 was arrested on 19.08.2023 at 13:00 hours, while the Applicant was arrested on the same day at 20:40 hours. Accused No. 3 was placed under arrest on 28.10.2024 at 21:00 hours, and Accused No. 4 was arrested on 16.01.2025 at 22:00 hours.

(B) The complaint alleges that the Applicant and Accused No. 3, Dheeraj Mathew, were involved in the financing of illicit trafficking of Charas by transferring funds to Accused No. 1, Tharik K. T., for the purchase of the seized contraband.

(C) According to the prosecution, the Applicant has violated the provisions of Section 8(c) and committed offences punishable under Sections 20(b)(ii)(B), 27, 27A, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, by participating in the inter-state procurement of 883.68 grams of Charas and becoming party to a criminal conspiracy with Accused No. 1. The Applicant is thus alleged to be involved in the inter-state transportation of 883.68 grams of Charas, and to have conspired with the co-accused. As such, the rigors of Section 37 of the NDPS Act, 1985 are attracted.

(D) The complaint refers to a summary of Call Detail Record (CDR) analysis concerning the accused persons, which outlines the communication between them. It is noted that, according to the CDR analysis, the Applicant appears to have contacted Accused No. 1 on two occasions, once on 16.08.2024 and again on 19.08.2024. In turn, Accused No. 1 also appears to have contacted the Applicant on 19.08.2024. Additionally, Accused No. 3 is shown to have contacted the Applicant twice, on 17.07.2024 and 22.07.2024. The summary further indicates that the Applicant contacted Accused No. 4/Om

Prakash on two occasions, namely on 14.08.2024 and 16.08.2024. The Call Data Record annexed with the Reply filed by the respondent indicates that, on 16.08.2024, Accused No. 1 contacted Accused No. 4 two times and Accused No. 4 appears to have contacted Accused No. 1 twice on the same date. The location from which such calls were made is shown to be Manikaran, Kullu, Himachal Pradesh. The prosecution relies on these CDR records to support its case.

(E) Furthermore, the complaint refers to a summary of bank transactions between the accused persons. As per the records, the Applicant is shown to have transferred amounts of Rs. 1,500/-, Rs. 500/-, and Rs. 49,999/- on 13.08.2024, 14.08.2024, and 15.08.2024, respectively, from his account in Federal Bank to the account of Accused No. 1 in Bank of Baroda. Additionally, transactions of Rs. 49,999/-, Rs. 2,500/-, Rs. 4,500/-, and Rs. 2,000/- were made on 15.08.2024, 16.08.2024, and 17.08.2024. A transaction of Rs. 49,999/- was made by the Applicant on 15.08.2024 from his account in Federal Bank to Accused No. 1's account in Indian Bank.

(F) The prosecution alleges that the applicant has received a total of Rs.85,000/- from Accused No. 3/Dheeraj through two transactions on 12.08.2024 into his Federal Bank account from Dheeraj's ICICI Bank account, and an additional sum of Rs.90,000/-

from Dheeraj's account in Bank of Baroda into the Applicant's Federal Bank account on the same date. The prosecution relies on the bank account statements of the accused persons to establish the money trail between the accused nos.3 to accused no.2 and from accused no.2 to accused no.1 to prima facie demonstrate their involvement in drug peddling.

4. Pursuant to his arrest on 19.08.2024, the Applicant filed Bail Application No. 163/2024 before the Sessions Court, Mapusa on 29.08.2024, which came to be dismissed vide an Order dated 20.09.2024 on the ground that the investigation was at the preliminary stage at that point and that the material brought on record suffices to show prima facie involvement of the Applicant in procuring the contraband. Subsequently, the Applicant approached this Court seeking bail by filing an Application, CRMAB/998/2024, on 25.11.2024, but the same was dismissed as the said Application was withdrawn by the Applicant with a liberty to file a fresh when cause arises, vide order dated 20.12.2024.

5. On 03.03.2025, the Applicant filed another bail application before the Sessions Court, Merces, citing change of circumstances on account of the Chargesheet being filed, which was rejected by an Order dated 29.03.2025, observing that the material that formed a part of the Chargesheet was accorded due consideration by the

Sessions Court, Mapusa while rejecting the Applicant's previous application for bail dated 29.08.2024 and no additional material was brought on record and neither was any explanation rendered to justify the transactions between the Applicant and Accused No. 1.

## **BAIL APPLICATIONS OF CO-ACCUSED**

6. Accused No. 1/was intercepted and arrested at the Thivim Railway Station on 19.08.2024 and was found to be in the possession of 883.68 grams of Charas. By an order of the District & Additional Sessions Judge II, Mapusa, North Goa, dated 30.09.2024 in Bail Application No. 186/2024, Accused No. 1 was enlarged on bail.

7. Accused No. 3 was arrested on 28.10.2024. A bail Application was filed by Accused No. 3 on 12.03.2025 before the Court of Additional Sessions Judge-3, North Goa, Merces Tiswadi Goa, which came to be rejected by an order dated 29.03.2025, stating that the transactions revealed by the Bank Account statement between Accused No. 3 and the Applicant suffice to demonstrate their involvement in the alleged trafficking of the contraband.

8. Accused No. 4 was arrested on 16.01.2025 and was enlarged on bail by an Order of the Court of District & Additional Sessions

Judge II, Mapusa, North Goa dated 28.01.2025 in Bail Application No. 25/2025.

### **REPLY FILED BY THE RESPONDENTS**

9. Opposing the present Application, the Respondent, in their reply, have urged the following grounds for rejecting the bail:

- (i) Considering the criminal antecedents of the Applicant, it is likely that he may engage in offences of the like nature, if enlarged on bail.
- (ii) That it is highly likely that the Applicant may abscond with the intention to avoid the proceedings instituted against him.
- (iii) Though the statements of the witnesses have been recorded, the trial is yet to commence. In the event that the Applicant is granted bail, there is an apprehension that the Applicant may threaten the witnesses.
- (iv) That there is no change of circumstance on the basis of which the Applicant seems to have approached this court for a second time, seeking bail. As such, the application deserves to be dismissed at the outset.

### **APPLICANT'S ANTECEDENTS**

10. The reply filed by the Respondent spells out the criminal antecedents of the Applicant that came to light during the course of

investigation. They are listed below:

- (i) Crime No. 41/2021 dated 16.02.2021 u/s 20 & 25 of the NDPS Act had been registered against the Applicant at Kullu Police Station in Himachal Pradesh. By an Order of the Special Judge-II, Kullu, Himachal Pradesh, dated 15.03.2021, the Accused No. 2/Ibrahim was granted bail in the said case.
- (ii) Crime No. 1171/16 u/s 118(a) of Kerala Police Act has been registered against the Applicant at the Ernakulam Town South Police Station.

### **APPLICANT'S SUBMISSIONS**

11. Ms. Sana Khan, learned Advocate for the Applicant, advanced the following submissions to make a case for grant of bail:

- (i) That the voluntary statements made by Accused Nos. 1, 3, and 4, as well as the voluntary statement of the Applicant under Section 67 of the NDPS Act, are inadmissible for the purpose of establishing the liability of the Applicant, as such statements are not admissible as evidence against the Applicant.
- (ii) That the applicability of the provisions of Section 37 of the NDPS Act is contingent upon the quantity of the contraband seized being classified as a commercial quantity. The Charas recovered from the person of the

Applicant was weighed at 883.68 grams, which constitutes a variable quantity; therefore, the threshold for the application of Section 37 is not satisfied in this case.

- (iii) That Section 27A of the NDPS Act is not applicable to the Applicant, as the requisite nexus between the transactions allegedly carried out by Accused No. 3 with Accused No. 2, and between Accused No. 2 and Accused No. 3, and the transaction between Accused No. 1 and Accused No. 4 (the supplier), has not been adequately established by the evidence on record.
- (iv) That the Applicant has been arrested with no communication of the grounds of arrest to him, in contravention of his fundamental right under Article 22(5) of the Constitution of India.
- (v) That there was no recovery of contraband effected from the Applicant's possession and that he was arrested on the confessional statement of Accused No. 1, which is not admissible in evidence.
- (vi) The Applicant claims invoking Section 27A of the NDPS Act, 1985 against him was unjustified, given that the said Section could be invoked if the Accused has independently financed a transaction without being a part of the actions mentioned in Section 8(c) of the NDPS Act.
- (vii) The Applicant claims parity citing that Accused No. 1, who

was allegedly found in possession of the alleged contraband, was granted bail by the Sessions Court, Mapusa vide order dated 30/09/2024, in Bail Application No. 186/2024 and Accused No. 4, who allegedly supplied the contraband to Accused No. 1, was granted bail by the Sessions Court, Mapusa vide order dated 28.01.2025, in Bail Application No. 125/2025.

(viii) That the Investigation has been completed, statements of the witnesses have been recorded and the Chargesheet has been filed on 06.02.2025, which does not sustain any reason to detain Accused No. 4 in Judicial Custody.

12. Learned Advocate for the Applicant relied on the following judgments in support of her arguments:

- (i) ***Lucky Sharma v. State of Goa***, Criminal Application (Bail) No. 8 of 2022, High Court of Bombay at Goa
- (ii) ***Maulana Mohammed Amir Rashadi v. State of U.P. & Anr.***, (2012) 2 SCC 382.
- (iii) ***Vihaan Kumar v. State of Haryana & Anr.***, 2025 SCC OnLine SC 269
- (iv) ***Sachin Mahipati Nimbalkar v. The State of Maharashtra***, (2024) SCC Online Bom 3493
- (v) ***Bharat Chaudhary v. Union of India***, (2021) 20 SCC 504.
- (vi) ***Harsh Yadav v. State of Government of NCT of Delhi***, Bail

Application 136 of 2025

(vii) ***Arun Kumar Azad v. Narcotics Control Bureau***, Bail Application No. 3620 of 2023, order dated 02.04.2024 (High Court of Delhi).

(viii) ***State of West Bengal v. Rakesh Singh Alias Rakesh Kumar Singh***, (2022) 19 SCC 306

(ix) ***Narcotics Control Bureau v. Pallulanib Ahmad Arimutta***, (2022) 12 SCC 633

(x) ***Shakil Ahmed Peer Mohd. Shaikh v. Union of India & Anr.***, 2024 SCC OnLine Bom 832

(xi) ***Ranjan Shaam Mawar v. The State of Maharashtra***, Bail Application No. 3880 of 2021, decided on 11.10.2022, High Court of Judicature at Bombay.

(xii) ***Kiran Machhindra Kale v. The Senior Inspector of Police***, Criminal Bail Application No. 2987 of 2022, decided on 14.10.2024, High Court of Judicature at Bombay.

(xiii) ***Toofan Singh v. State of Tamil Nadu***, (2021) 4 SCC 1.

## **SUBMISSIONS OF THE PUBLIC PROSECUTOR**

13. *Per Contra*, Mr. Somnath Karpe, learned Additional Public Prosecutor, put forth the following contentions:

(A) That the rigors of Section 37 would apply to the case of the applicant since he has been charged with the offence of financing illicit traffic of drugs under Section 27-A;

(B) It was further submitted that the CDR of the phone record of the applicant which clearly shows that he was in touch with accused no.1 immediately prior to the accused no.1 being searched; The CDR also reveals conversations between the applicant, accused no.3 and between accused no.1 and accused no.4, which demonstrates the connection between them and the fact that the applicant is the main financer of the drug ring; It was further submitted that the UPI transactions and bank transfers from the accused no.3 to the applicant and from the applicant to the accused no.1, the person who has transported the drugs, would clearly establish the fact that the applicant was the main financer of the network of supply of the drugs.

(C) Learned Public Prosecutor relied on the following judgments in support of his arguments:

- (i) ***Kasireddy Upendra Reddy v. State of Andhra Pradesh & Ors.***, 2025 SCC OnLine SC 1228
- (ii) ***State of Kerala & Ors. v. Rajesh & Ors.***, (2020) 12 SCC 122.
- (iii) ***Union of India v. Ratan Mallik Alias Habul***, (2009) 2 SCC 624.
- (iv) ***Narcotics Control Bureau v. Mohit Aggarwal***, (2022) 18 SCC 374.

## **CONSIDERATIONS**

14. The material on record reveals that the alleged contraband was found in possession of accused no.1 when he was taken off the train at Thivim Railway Station. The contraband was, after being tested with a kit, at the place where the accused no.1 was searched, was found to be Charas. The total quantity seized was 883.68 grams, which by definition is a variable quantity. Accused no.1 was arrested immediately thereafter on 19.08.2024. The rigors of Section 37 would per se not apply to the accused no.1. It was for this reason that the accused no.1 was admitted to bail by the Sessions Court on 30.09.2024.

15. The statement of accused no.1 under Section 67 was recorded by the IO and it is through his statement that the Applicant was implicated as being the financer and supplier of the contraband. In *Tofan Singh* (supra), in a majority decision of the Supreme Court, it was held that a confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under that Act. ***Tofan Singh*** (supra) has been followed in ***Bharat Chaudhary*** (supra), observing as follows:

*“5. Being mindful of the recent verdict of a Three Judge Bench of this Court in *Tofan Singh v. State of Madras* wherein as per the majority decision, a confessional statement recorded*

*under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act, the learned Special Judge, EC & NDPS Cases, Chennai granted bail to Bharat Chaudhary [A-4].*

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*10. After carefully examining the arguments advanced by learned counsel for the parties and having cursorily glanced at the records, we are of the opinion that the impugned order cancelling the bail granted in favour of Bharat Chaudhary [A-4], is not sustainable in view of the fact that the records sought to be relied upon by the prosecution show that one test report dated 6 ^ m December, 2019, two test reports dated 17th December, 2019 and one test report dated 21 December, 2019 in respect of the sample pills/tablets drawn and sent for testing by the prosecuting agency conclude with a note appended by the Assistant Commercial Examiner at the foot of the reports stating that "quantitative analysis of the samples could not be carried out for want of facilities". In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substances as contemplated under the NDPS Act. Further, a large number of the tablets that have been seized by the DRI admittedly contain herbs/medicines meant to enhance male potency and they do not attract the provisions of the NDPS Act. Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted, either A-4 at Jaipur, on 16th March, 2020. at the office or at the residence*

*of A-4 Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.*

*11. In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in *Tofan Singh* (supra). The impugned order qua A-4 is, accordingly, quashed and set aside and the order dated 2nd November, 2020 passed by the learned Special Judge, EC & NDPS Cases, is restored. As for *Raja Chandrasekharan* [A-1], since the charge sheet has already been filed and by now the said accused has remained in custody for over a period of two years, it is deemed appropriate to release him on bail, subject to the satisfaction of the trial Court.”*

16. This Court, in ***Shakil Ahmed*** (supra), after making reference to ***Tofan Singh*** (supra) has considered the admissibility of a voluntary statement of an accused under Section 67 of the NDPS Act, and of CDRs collected during investigation, and has held as under:-

*“8. I have carefully perused the compliant and the documents annexed with it, the averments in the application and the contentions in the affidavit-in-reply filed on behalf of*

*respondent No. 1. I have also given anxious consideration to the rival submissions canvassed across the bar.*

*9. In view of the provisions contained in Section 37(1)(b)(ii) a person accused of an offence punishable under the Act involving commercial quantity cannot be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty and that he is not likely to commit any offence while on bail. The term "reasonable ground" has been construed to mean something more than *prima facie* grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged (*Union of India v. Shivshankar Kesari*).*

*10. Can the twin test be said to have been satisfied in this case?*

*11. Evidently, the parcel was allegedly booked at GPO, Mumbai. The receipt of booking (page 57) shows that Mr. Rahim Khan R. Pathan was the consignor and the consignee was Jafri Khan, based at USA. There is material to indicate that Rahim Khan had not booked the said parcel and his credentials were fraudulently used to book the parcel.*

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*16. The endeavour on behalf of the prosecution was to rely upon the voluntary statement of the applicant under Section*

*67 of the NDPS Act, 1985 and the CDR. In view of the decision of the Supreme Court in the case of Tofan Singh v. State of Tamil Nadu, a statement recorded under Section 67 of the NDPS Act, 1985 cannot be used as a confessional statement in the trial of an offence under the NDPS Act, 1985. Therefore, it would be impermissible for prosecution to press into service the voluntary statement of the applicant under Section 67 of the NDPS Act, 1985 to demonstrate that the applicant was in possession of the narcotic substance.*

*17. It is well recognised that "possession" which finds mention in Section 22 of the NDPS Act, 1985 connotes conscious possession. The expression, "possession" is a relative term and assumes different colours in different context. In the case of Mohan Lal v. State of Rajasthan, it was enunciated that the term, "possession" consists of two elements. First, it refers to the corpus or the physical control and the second, it refers to the animus or intent which has reference to exercise of the said control. The word, "possession" refers to a mental state as is noticeable from the language employed in Section 35 of the NDPS Act, 1985.*

*18. Reverting to the facts of the case, the situation which obtains is that apart from the statement of Mr. Dilip Pandey, there is no other material to *prima facie* connect the applicant with the factum of possession, much less the knowledge that the parcel contained the narcotic substance. As is evident, it was Mr. Dilip Pandey, who had taken the parcel to the booking counter and booked it. Rahim Khan, the purported consignor did not claim that he had known the applicant. Nor there appears any material to show that on the day of occurrence*

*the applicant had either packed the parcel at the counter of Mr. Dilip Pandey or accompanied Mr. Dilip Pandey to the booking counter. The accusation against the applicant thus rests on the statement of a person, who had himself booked the said parcel containing the narcotic substance. Second circumstance of the telephonic conversation between the applicant and Mr. Guddu, in the absence of the transcript, does not by itself incriminate the applicant.*

*19. I am, therefore, impelled to hold that the applicant has succeeded in making out a substantial probable case to believe that the applicant may not have been found in conscious possession of the narcotic substance. The Court may thus be justified in drawing an inference that the applicant may not be guilty of the offences punishable under the NDPS Act, 1985. The Court is not informed that the applicant has antecedents.”*

**17.** Thus, as held in the aforementioned judgments, the statement of accused no.1, which is the document by which the applicant has been implicated and roped in as the financer, and the provision of Section 27-A has been applied to him, is inadmissible in evidence, and its contents could not be looked at for the purpose of deciding his bail application.

**18.** From the material on record, the search conducted by the NCB at the residence of the applicant revealed no incriminating material. This is recorded in the Nil Panchanama dated 19.08.2024.

Thereafter, immediately before his arrest, the statement of the applicant under Section 67 was recorded, which reveals the applicant's admission that he was involved in financing a drug ring and in financing the contraband seized from accused no.1. This statement being inadmissible in evidence, being self-incriminatory as held in ***Tofan Singh*** (supra) and in ***Shakil Ahmed*** (supra) would have to be discarded. The only other material, which is placed reliance on by the prosecution to connect the applicant to the accused no.1 and other accused, to attempt at demonstrating that the applicant was directly financing the drug network was by placing reliance on the bank statements to indicate the transactions from the accused no.3 to accused no.2 and from accused no.2 to accused no.1. For easy reference, the details of the money transactions amongst the accused persons are given below in tabular form:

**A. Accused No. 3 (ICICI Bank) to Applicant (Federal Bank)**

DATE OF TRANSACTION	AMOUNT
12.08.2024	50,000/-
12.08.2024	35,000/-

**B. Accused No. 3 (Bank of Baroda) to Applicant (Federal Bank)**

DATE OF TRANSACTION	AMOUNT
12.08.2024	40,000/-
12.08.2024	50,000/-

C. Applicant (Federal Bank) to Accused No. 1 (Bank of Baroda)

DATE OF TRANSACTION	AMOUNT
13.08.2024	1,500/-
14.08.2024	500/-
15.08.2024	49,999/-

D. Applicant (Federal Bank) to Accused No. 1 (Canara Bank)

DATE OF TRANSACTION	AMOUNT
15.08.2024	49,999/-
16.08.2024	2,500/-
17.08.2024	4,500/-
17.08.2024	2,000/-

E. Applicant (Federal Bank) to Accused No. 1 (Indian Bank)

DATE OF TRANSACTION	AMOUNT
15.08.2024	49,999/-

F. Cash withdrawals by Accused No. 1 at Manikaran ATM,  
Himachal Pradesh

CANARA BANK	
DATE OF TRANSACTION	AMOUNT
15.08.2024	10,000/-

15.08.2024	10,000/-
15.08.2024	10,000/-
15.08.2024	10,000/-
15.08.2024	10,000/-

**INDIAN BANK**

DATE OF TRANSACTION	AMOUNT
15.08.2024	10,000/-
15.08.2024	10,000/-
15.08.2024	10,000/-
15.08.2024	10,000/-
15.08.2024	10,000/-
15.08.2024	10,000/-

**BANK OF BARODA**

DATE OF TRANSACTION	AMOUNT
15.08.2024	10,000/-
15.08.2024	10,000/-
16.08.2024	10,000/-
16.08.2024	10,000/-
16.08.2024	10,000/-

19. If one examines these transactions, an amount of approximately Rs.1,50,000/- has been deposited by the applicant into the account of accused no.1 between 13.08.2024 and 15.08.2024 after which accused no.1 has made fifteen withdrawal

transactions of Rs.10,000/- each on 15.08.2024. The accused no.3 is alleged to have transferred a total of Rs.1,75,000/- to the account of the applicant all on 12.08.2024. It is the prosecution's submission that based on these transactions the money trail from accused no.3 to accused no.2 and then to accused no.1, who allegedly procured the drugs from accused no.4 is established. However, the only manner in which the accused no.1 is connected with accused no.4, is once again through the statement under Section 67 of the accused no.2, which is inadmissible. Further, a perusal of the statement under Section 67 of the accused no.4, which is recorded on 21.01.2025, almost five months after the applicant was arrested, would reveal that there is no implication by accused no.4 of either accused no.1 or the applicant. Even otherwise, the statement under Section 67 of accused no.4 was taken after he was arrested on 16.01.2025, whilst in custody, and could not be termed as a voluntary statement. Prima facie therefore, from this material, it cannot be established, unless evidence is led, that the applicant was directly involved in financing illicit traffic of narcotics.

20. On this material alone, I am satisfied that there is a prima facie case made out by the applicant that there are reasonable grounds to believe that he is not guilty for the offence under Section 27A of the Act.

21. The further material relied upon by the prosecution is the CDR record of the phone calls between the applicant and the accused no.4 and the accused no.1. The CDR records are in the nature of electronic evidence and would be required to be proved in evidence. However, the fact remains, that on examining these records what is revealed is that the applicant has recorded one call to accused no.4 on 14.08.2024, and two calls to the accused no.1, the first being on 16.08.2024 and the second on 19.08.2024, when the accused no.1 was arrested at the railway station. Merely because there have been calls made by the applicant to accused no.4 and accused no.1, at this stage does not establish the direct involvement of the applicant in an offence under Section 27A of the Act. It is proved in evidence after production of the CDR records through the phone companies and after expert evidence has been recorded. These records would however, at this stage, not advance the case of the prosecution any further than demonstrating that the applicant was in contact with accused no.4 and accused no.1.

22. Accused no.1, who was arrested on 19.08.2024 and was allegedly in possession of the contraband, has been granted bail on 30.09.2024 since rigors of Section 37 would not apply to his case, the quantity of Charas in his possession being variable quantity. Accused no.4 was granted bail on 28.01.2025 for reasons that he was found to be the supplier of the contraband, which was variable

quantity. Bail applied for by accused no.3 was rejected by order dated 29.03.2025 and he is still in custody. The investigation has been completed and a charge-sheet was filed on 06.02.2025. Charge is yet to be framed against the accused, and the charge-sheet is pending before the Sessions Court. It would obviously take considerable time for the charge to be framed, and if framed against these accused, the trial to commence. The charge-sheet cites eighteen witnesses, which would further take considerable time for their evidence to be recorded. For reasons stated above, no purpose would be served in keeping the applicant in custody until trial is completed.

23. The grant of bail is opposed by the State on the count that the applicant has been charged of an offence under Section 20 of the Act and is facing trial in Himachal Pradesh. He is admittedly out on bail in that case under an order dated 15.03.2021. The order granting bail to the applicant records that the quantity of contraband involved in that case was a variable quantity, and therefore the rigors of Section 37 do not apply. Certain conditions were imposed on the applicant whilst passing that order, and it is not the case of the prosecution that any of them have been breached. The other case pending against the applicant is a proceeding filed under the Kerala Police Act under Section 118(a) thereof, which is an offence of being found in public place in an intoxicated manner or rioting

condition or incapable of looking after himself, and attracts a fine not exceeding Rs.10,000/- or imprisonment which may extend to three years. This case pertains to the year 2016 and is a relatively minor offence. There are no other criminal antecedents referred to by the State in relation to the applicant. In my opinion therefore, neither of the above pending cases could operate as an embargo to the grant of bail to the applicant.

24. The only issue that now remains, is whether there is a reasonable apprehension made out by the State, that the applicant would flee from the trial or is likely to commit an offence while on bail. There is no material on record that the applicant has otherwise breached the conditions of his earlier bail order in the case where he is standing trial in Himachal Pradesh. Certain conditions can be imposed on the applicant, on his movement, after considering that he is required to stand trial in Himachal Pradesh, besides in the State of Goa.

25. Considering that on the aforementioned grounds, as I propose to release the applicant on bail, I need not consider the submissions of the applicant that the grounds of arrest were not explained to the applicant, and he would be entitled to bail in terms of the judgment of ***Vihan Kumar*** (supra); The judgment of ***Vihan Kumar*** (supra), insofar as one of the views taken therein that the grounds of arrest

are required to be given in writing, is presently being re-considered by a larger Bench of the Supreme Court.

26. Considering all these facts and for reasons stated above, the application of the Accused for bail is granted on the following conditions:

- (i) The Accused/Applicant shall be released on executing a Bail Bond of Rs.1,00,000/- (Rupees One Lakh only) with one surety in the like amount, to be executed before the Sessions Court, North Goa at Merces.
- (ii) The Accused/Applicant shall furnish to the Sessions Court and Investigating Officer a copy of his Aadhaar card, full residential address at Goa and in his home State of Kerala, his email ID and mobile phone number, which shall be kept functional and on at all times to enable the Investigating Officer to contact him;
- (iii) The Accused/Applicant shall not interfere with any of the witnesses or attempt to contact them by himself or through any of his associates. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing these facts to the Court.

(iv) The Applicant shall not leave the State of Goa without permission of the Sessions Court, Merces; If the Applicant possesses a passport he shall surrender the same and deposit such passport before the Sessions Court.

(v) The Accused/Applicant shall present himself before the I.O. for two months immediately after this order, on the first and fourth Monday between 10.00 a.m. and 1.00 p.m.

(vi) The applicant shall attend every date of hearing of the NDPS (NCB) Special Case No. 17/2025 before the Sessions Court at Merces unless exempted by that Court from appearance through an appropriate application.

27. The application stands disposed of in the above terms.

28. All concerned to act on an authenticated copy of this order.

**VALMIKI MENEZES, J.**