

(2024) 07 GUJ CK 0085

In the Gujarat High Court

Case No : Criminal Miscellaneous Application (For Successive Regular Bail - After Chargesheet) No. 10748 of 2024

Saiyad Tausif Ahmed Mustufa Versus

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-07-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8(c), 22(C), 29, 35, 37, 42, 52A, 52-A(1), 54

Indian Penal Code, 1860 — Section 34, 302

Citation : (2024) 07 GUJ CK 0085

Hon'ble Judges : Divyesh A. Joshi

Bench : Single Bench

Advocate : Aditya Bhat, Amit D Shah, Mitesh Amin, Soham Joshi

Final Decision : Dismissed

Judgement

Divyesh A. Joshi, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. The present application under the title as successive application filed under Section 439 of the Code of Criminal Procedure, 1973, is a second attempt on the part of the applicant, seeking regular bail in connection with the FIR being C.R. No.I-11210050231267 of 2023 registered at Rander Police Station, Surat of the offence punishable under Sections 8(c), 22(c) and 29 of the NDPS Act.

3. Here, in the present proceedings, I would not take much stress to narrate the entire facts again as the same has already been taken in the previous proceedings being Criminal Misc. Application No.4232 of 2024, which is reproduced herein below;

"3. In nutshell, the case of the prosecution is as under;

3.1 The complaint came to be registered by Shri M.D. Mahida, Police Sub-Inspector, D.C.B. Police Station, Surat City stating that on 20.09.2023, Police Constable Chandradipsinh Mahendrasinh, Buckle No.2214 received a tip-off that one Tausif Saiyed, residing at Flat No.501, 5th Floor, Peace Point Apartment, Rander has been secretly indulged in selling of the contraband drug since long who has hidden the contraband substance in the drover of the wooden made cupboard in the last room of his flat. The said information was then reduced into writing and forwarded to the Deputy Police Commissioner, Surat City.

3.2 Thereafter, for the purpose of carrying out raid, Panchas were also called for and after following the due procedure of raid, all the members of the raiding party reached at the given address at around 19:25 hours. On knocking the door of the flat, one person came out and identified himself as Tausif S/o. Mohammed Mustufa. The police then got acquainted the said person with the secret information received by them and entered into the house.

3.3 Thereafter, personal search of Tausif was carried out, however, nothing objectionable was found upon his personal search. After that, the police went to the last room of the flat and made a search of the cupboard from where one plastic zip bag was found lying in the drover containing suspicious powder having pungent smell. Upon being asked about the said powder, the applicant-accused admitted it to be the contraband psychotropic substance. Thereafter, samples were taken and upon testing with the drug detection kit, the samples tested positive for Mephedrone. Hence, the present FIR.”

4. Learned advocate Mr. Aditya Bhatt for learned advocate Mr. A.D. Shah appearing for the applicant submits that the present bail application is a successive bail application. The earlier bail application being Criminal Misc. Application No.4232 of 2024 came to be rejected by this Court vide order dated 07.03.2024. However, due to some subsequent developments having been taken place in the matter as well as availability of other grounds which were left out in the application filed at the first instance, the present application has been preferred. Learned advocate Mr. Bhatt further submits that the so called incident took place on 25.09.2023, and on the very same day, the first information report was filed and the applicant-accused was arrested, and ever since, the applicant-accused is in jail. He also submits that there is no incriminating material found against the applicant-accused in the entire compilation of the charge-sheet papers. Learned advocate Mr. Bhatt further submits that almost all the arguments regarding the factual aspects of the matter have already been raised in the previous proceedings. He, therefore, submits that the main bone of contentions which could not be made in the earlier proceeding and which has encouraged the applicant-accused to file the present application is the procedural negligence on the part of the investigating officer at the time of drawing of the samples of the narcotic substance, which is required to be followed in stricto sensu manner as per the law laid down by the Hon’ble Supreme Court as well as the various High Courts time and again in catena of decisions, so also the

guidelines issued by the State Government as well as the Central Government.

5. Learned advocate Mr. Bhatt further submits that there is no compliance of Section 52A of the NDPS Act. The provisions of the NDPS Act are extremely stringent, coupled with various presumptions raised against the accused and stringent bail conditions, all made the NDPS Act a very stringent measure of legislation, which, the more stringent it is, must contain necessary safeguards against arbitrary search, seizure and arrest, or else it would fall foul of the fundamental rights chapter of the constitution and hence, the same requires a strict adherence to the law and procedures. The so-called technicalities of the NDPS Act are the only safeguards available to anyone prosecuted under the NDPS Act. That, these safeguards are the only remedies available to the innocent person to prove his innocence.

6. Learned advocate Mr. Bhatt also submits that the Hon'ble Supreme Court in Union of India Vs. Mohanlal and Anr., reported in 2016 3 SCC 379, had directed all the investigating agencies to draw the representative samples that are supposed to be sent to the Central Forensic Science Laboratory ('CFSL' for short) for determination of the contraband before the Magistrate. The same has not been done in the present case. Reliance is placed on paragraph Nos. 15, 18 and 20 Mohanlal (supra). Pursuant to the directions of the Supreme Court in Mohanlal (supra), the Government after 6 years accepted the mandate of Section 52A of the NDPS Act as interpreted by the Supreme Court. The rules called Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 ('NDPS Rules 2022' for short) were brought into force.

7. Further reliance is placed on the decisions of the Supreme Court in the case of Bothilal Vs. The intelligence Officer, NCB [2023 SCC OnLine SC 498], Simranjit Singh Vs. The State of Punjab [2023 SCC Online SC 906, Mangilal Vs. The State of Madhya Pradesh [2023 SCC Online SC 862, to submit that the appellants therein are either acquitted or released on bail due to non-compliance of Section 52A of the NDPS Act.

8. Reliance is then placed on decision of the Delhi High Court in the case of Ms. Betty Rame vs. Narcotics Control Bureau, Criminal (Bail) 1234 of 2022 in CRL.A.338 of 2021, to submit that the High Court of Delhi, after referring to the decisions in Mohanlal (supra) and other case laws, suspended the sentence of the appellant therein for non-compliance with the provisions of Section 52A of the NDPS Act as well as the Standing Orders issued by the Ministry of Finance on 23rd December, 2022.

9. Reliance is also placed upon the decision in Kashif vs. Narcotic Control Bureau, 2023 SCC Online Del 2881, wherein the Delhi High Court, after placing reliance on the standing order 1 of 1988 and in Mohanlal (supra), had further interpreted the term "forthwith" under section 52A of the NDPS Act as a period within 72 hours. The Delhi High Court enlarged the applicant on bail due to inordinate delay in following the procedure prescribed under section 52A of the NDPS Act.

10. Learned advocate Mr. Bhatt has heavily relied upon the decision in the case of Noor Aga vs. State of Punjab & Anr., (2018) 16 SCC 417 to submit that in the said case, the Hon'ble Supreme Court reversed the judgment and order of Punjab & Haryana High Court whereby the appeal filed by the appellant against the judgment and order of conviction came to be dismissed by the High Court. The Hon'ble Apex Court in Noor Aga (supra) has held that 'when the directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith'. It has been further held that the logical corollary of the discussions made therein is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact.' While concluding, it has been further held and observed by the Hon'ble Supreme Court that the provisions of Sections 35 and 54 are not ultra vires the Constitution of India, however, procedural requirements laid down therein are required to be strictly complied with.

11. Heavy reliance is also placed upon the decision of the Hon'ble Apex Court in the case of Khet Singh vs. Union of India, AIR 2002 SC 1450 and submits that in the said case, the Hon'ble Supreme Court, considered the scope and binding force of the Executive instructions issued by the Narcotic Bureau, New Delhi and came to the conclusion that such instructions are binding and have to be followed by the investigating officer, coming within the purview of Narcotic Drugs and Psychotropic Substance Act, 1985, even though such instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by them during the investigation of the crime. It has been further held in Khet Singh (supra) that 'law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.'

12. Reliance is then place upon the decision in the case of Union of India vs. Bal Mukund & Ors., (2009) 12 SCC 161 to contend that in the said case, the Hon'ble Apex Court, after referring to certain case laws, while upholding the decision of the Madhya Pradesh High Court, has held that 'there is another aspect of the matter which cannot be lost sight of. Standing Instruction No.1/88, which had been issued under the Act, lays down the procedure for taking samples. The High Court has noticed that PW-7 had taken samples of 25 grams each from all the five bags and then mixed them and sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. It was a requirement in law.'

13. Learned advocate Mr. Bhatt submits that the aforesaid decision in Khet Singh (supra) has been consistently followed and interpreted by the Hon'ble Apex Court as well as the various High Courts in the cases such as Joint Action Committee of Airlines Pilots Associations of India & Ors. vs. The Director General of Civil Aviation & Ors.; Rajesh & Ors. vs. The State of Madhya Pradesh; Vaisakh vs. State of Kerala & Ors.].

14. Learned advocate Mr. Bhatt has also relied upon the decision in the case of Indian Petrochemicals Corporation Limited vs. Shramik Sena (2001) 7 SCC 469 to revolve the conflict, if any, between two contrary views taken by the different benches of the highest court of the country. In the said decision, the Hon'ble Apex Court observed that when faced with diametrically opposed judgments of the Hon'ble Supreme Court an Hon'ble High Court is expected to adjudicate the case on its merits, applying its own interpretation of the conflicting judgments.

15. A decision of the Punjab & Haryana High Court in the case of Pankaj vs. State of Punjab, CRM-M No.25498 of 2021 as well as the decision of the Bombay High Court in the case of Shivraj Gorakh Satpute vs. State of Maharashtra, Bail Application No.2865 of 2022 and the decision of the Delhi High Court in the case of Aabid Khan vs. State Govt. NCT of Delhi, Bail Application No.1156 of 2023 have also been relied upon by the learned advocate for the applicant to contend that in the said decisions, the respective applicants-accused therein came to be released on bail on the ground of non-compliance of Section 42 of the NDPS Act.

16. Learned advocate Mr. Bhatt has also relied upon the decision of the Orissa High Court in the case of Anil Kumar Dash vs. State of Orissa, BLAPA No.1947 of 2015 to contend that the quantity of Mephedrone seized in the present case does not come within "commercial quantity" if the proper procedure of weighment was being followed, and as such the bar under section 37 of the NDPS Act for grant of bail is not applicable. Even if the quantity of the contraband shown in the FIR is to be taken into consideration, then also the same is 50.650 grams and as per the notification issued by the Government, 50.00 grams of Mephedrone comes under the category of commercial quantity and below that, i.e, 49.999 grams would fall under the category of intermediate quantity and, therefore, it can safely be said that the quantity of Mephedrone recovered from the applicant-accused is slightest higher than the intermediate quantity, and as such, benefit of doubt may be given to the applicant-accused.

17. Learned advocate Mr. Bhatt submits that in the case on hand, at the time of conducting the seizure proceedings, the concerned investigating officer has not followed the mandatory provisions of the NDPS Act and the safeguards provided therein. There is a clear cut breach of Section 42 of the NDPS Act, which provides that any search and seizure made after sunset without obtaining the requisite warrant or recording the reasons for proceeding further is unlawful and is bad in the eyes of law. The said section clearly stipulates that the powers conferred therein are to be exercised between sunrise and sunset, with a specific exception for nighttime searches, and if the officer, for one reason or the other,

believes to proceed with the seizure proceedings even in the nighttime, then he has to record the grounds for their belief before proceeding with the nighttime search. In the present case, the raid was carried out at the premises of the applicant-accused during the night hours, and as per Section 42 of the NDPS Act, when the raid is being carried out after sunset, warrant from the concerned Magistrate is sine qua non, which has not been obtained in the present case. Therefore, there is a clear cut breach of Section 42 of the NDPS Act. Learned advocate Mr. Bhatt also submits that in the present case, there is a clear cut breach of terms and conditions imposed by the legislature through certain guidelines which were issued on the strength of certain observations made by the Hon'ble Apex Court in certain case laws, which are required to be followed in stricto sensu manner, and breach of any of the said conditions would raise suspicion towards the entire procedure carried out by the investigating officer. Learned advocate Mr. Bhatt further submits that as per the settled proposition of law, application for drawing sample of a narcotic drugs or psychotropic substance before the concerned Magistrate under Section 52A of the NDPS Act should be made preferably within 72 hours, which has not been done in the present case. Therefore, on account of the procedural delay and laches on the part of the investigating officer at the time of carrying out the procedure of drawing of the samples, as held in catena of decisions by the Hon'ble Apex Court as well as various High Courts, the applicant-accused is entitled to be released on bail.

18. In such circumstances, referred to above, learned advocate Mr. Bhatt prays that there being merit in his application, the same be allowed and the applicant-accused be released on bail.

19. Per contra, learned Additional Advocate General Mr. Mitesh Amin assisted by learned APP Mr. Soham Joshi appearing for the respondent-State has raised a preliminary objection about the maintainability of the present application. Learned AAG Mr. Amin submits that the present application deserves to be dismissed on two grounds only; (i) any application prima facie, seems to be in the nature of review application cannot be entertained in the criminal proceedings and (ii) the grounds raised in the present application were very much available with the applicant in the application filed at the first instance.

20. Learned AAG Mr. Amin submits that so far as the first ground is concerned, the earlier application filed by the applicant-accused was filed after submission of the charge-sheet, which came to be rejected by this Court by a reasoned judgment after considering and appreciating all the materials placed on record at that point of time. Admittedly, the said judgment and order has not been carried further by the applicant before the Hon'ble Apex Court, and once again straightway has approached this Court with the present application under the title of successive bail application which, according to learned AAG Mr. Amin, falls under the purview of review application, which is not permissible in the eye of law so far as the criminal proceedings are concerned. Secondly, the main bone of contentions raised by the learned advocate for the applicant in the present

application is that certain arguments could not be canvassed or left out at the time of hearing of the previous application and, therefore, the applicant-accused has to again approach this Court. However, the question now arises whether such kind of practice is permissible in law?, without being first approached to the concerned sessions court. Certainly, No, because after getting the order of rejection from the High Court, the only remedy available with the accused to challenge the said order before the Supreme Court, and then if the Supreme Court also declines to entertain the petition, the first and foremost remedy available with the applicant-accused is to approach the concerned Sessions Court and then come to the High Court, if need be. He cannot straightway approach the High Court without fulfilling the prerequisite conditions provided in law in bail matters. All the contentions raised by the applicant-accused in the present application were very much available with him in the previous proceedings and thus the applicant-accused cannot be allowed to fill up his own lacuna by filing the the present application. He can avail appropriate recourse available in law. The applicant-accused is not completely remediless. Learned AAG Mr. Amin submits that on this two grounds alone, the present application is required to be dismissed at the very threshold. Learned AAG Mr. Amin has shown very serious concerned about the maintainability of this application. He submits that supposing if the present application is allowed and the applicant is released on bail, the same would pave the way for number of accused persons to adopt such kind of practice. Therefore, the same should not be allowed to go further.

21. Learned AAG Mr. Amin justified the action of the police in drawing samples at the time of the seizure. The samples were drawn in the presence of the panchas. The samples were immediately sent to the State Forensic Science Laboratory (FSL) for analysis. The examination report of the FSL reveals that the contraband is Mephedrone which falls under the NDPS Act. The decisions of the Supreme Court relied upon by the learned advocate for the applicant is not of assistance to the applicant as the same is rendered upon appreciation of evidence adduced during the trial and is not at the stage of bail. At the stage of considering the bail application, the twin conditions prescribed by Section 37 of the NDPS Act will have to be satisfied. There is nothing in the NDPS Act which prohibits the drawing of the samples at the time of the seizure. The veracity of drawing samples post seizure on the spot is to be tested at the stage of trial. The samples were drawn in the presence of the independent panchas and immediately sent to the FSL which confirmed that the substance was contraband. Even though, if the accused has any grievance as regards the delay for not forwarding the samples to the FSL in compliance with Section 52A, the same is the subject matter of the trial as the primary evidence in terms of Section 52A in the form of samples is available.

22. Learned AAG Mr. Amin submits that so far as the case of Mohanlal (supra) is concerned, considering the peculiar facts of that case, certain directions were issued by the Hon'ble Apex Court as regards the procedure required to be followed at the time of seizure of the contraband drug, and on the strength of

the said order, certain Standing Orders/Instructions were also issued by the Central Government which have been followed from time to time by the concerned investigating officers in number of cases. In short, the investigating officer has to adhere to the said guidelines, however, those Executive Orders issued on the strength of the directions issued by the Hon'ble Apex Court, of course, have the guiding force in carrying out the investigation but the same is not mandatory in nature. If due to oversight or by mistake, the said instructions/guidelines could not be followed by the investigating officer at the time of drawing of the samples, the same would not vitiate the entire trial.

23. To substantiate his aforesaid submissions, learned AAG Mr. Amin has relied upon the decision in the case of *State of Punjab vs. Makhan Chand*, reported in (2004) 3 SCC 453 and submits that after referring to the decision of *Khet Singh* (supra), the Hon'ble Apex Court has held that Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances. It has been further held that when the similar issue came up for consideration in *Khet Singh* (supra), the Hon'ble Supreme Court took the view that Standings Orders are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery where the officer may not have the facility to prepare the seizure mahazar at the spot itself.' Thus it appears from the aforesaid decision that the Standing Orders or the Executive Instructions issued by the Central Government contain in it the guiding force of carrying out a particular procedure, however, the same does not have the binding force. Learned AAG Mr. Amin has also placed reliance upon the decision of the Hon'ble Apex Court in the case of *Kallu Khan vs. State of Rajasthan*, reported in (2021) 19 SCC 197, to contend that in the said decision while upholding decision of the High Court of Judicature of Rajasthan, affirming the order of conviction passed by the Special Judge (NDPS, Jhalawar, Rajasthan, the Hon'ble Supreme Court has held that the directions given in *Mohanlal* (supra) were on the administrative side and, therefore, the same is not applicable in the peculiar facts of that case. Thus, it appears from the aforesaid decision that those Executive Instructions or the Standing Orders are administrative in nature and not mandatory and, therefore, in case of any failure in following the said guidelines through oversight by the investigating officer, does not automatically entitle the accused for any relief.

24. In such circumstances, referred to above, learned AAG Mr. Amin prays that there being no merit in the present application, the same be rejected.

25. Having heard the learned counsel appearing for the respective parties and having gone through the materials available on record, the following two questions fall for my consideration;

(i) Whether the present application is maintainable under the title as successive

bail application? Or

(ii) Whether the grounds taken in the present application could be termed as 'change of circumstances', necessary for filing the successive bail applications;

26. I would not like to again go into the merits or de-merits of the matter and would confine my observations so far as the aforesaid two questions posed by me are concerned, as I have very minutely dealt with each and every aspect of the present case in the previous judgment. The observations made therein are as under;

"7. I have heard the learned counsel for the applicant, learned APP for the State and perused the records of this case.

8. In the present case, there is recovery of 52.550 grams of Mephedrone from the house owned by the applicant-accused. He has been indulged in selling of the psychotropic substance Mephedrone since long which is apparent from the statement of the witnesses recorded by the investigator wherein they have stated that before the incident in question, they purchased the Mephedrone from the applicant-accused. It is pertinent to note that the total quantity of contraband recovered in this case is 52.550 grams which falls under the commercial quantity and thus the embargo of Section 37 of the NDPS Act is applicable.

9. The scheme of Section 37 NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

10. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantially probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

11. The learned advocate for the applicant-accused while making a defense has given much weightage to the method of weighing of the psychotropic substance. However, the same does not come to the rescue of the applicant as in the case on hand, as required under the law, the contraband substance has been weighed separately from the plastic bag in which it was kept which hardly makes any difference in the quantity of the contraband recovered from the conscious

possession of the applicant as even if the weight of the plastic bag is deducted from it, the same would still be found under the category of commercial quantity considering that a plastic bag will be weighing very little. It is pertinent to note here that when the contraband substance was first weighed along with the plastic zip bag in which it was originally kept, it weighed 52.550 grams. Thereafter, the contraband substance was emptied from that plastic bag and filled in another plastic bag of the same dimension which was also recovered from the spot, the weight of which was found to be of 1.570 grams. Then, when again the contraband substance was weighed along with the new plastic bag, it was found to be of 52.030. After that, the original plastic bag from which the contraband substance was found, was also weighed upon which it was found to be of 2.090 grams. Thus, there appears to be a little bit distinction between the two plastic bags of the same dimension while weighing. As the contraband substance was in the powder form, it might be that little bit of power remained stuck at the inner side layer of the plastic bag for which the weight of the original plastic bag got little bit increased. Therefore, let me first determine the weight of the drug remained stuck at the inner side layer of the plastic bag by deducting the weight of one bag, i.e, 1.570 grams from the weight of another bag, i.e, 2.090 grams, which ultimately comes to 0.52 grams ($2.090 - 1.570 = 0.52$). Now, let's determine the actual weight of the contraband substance. It is apparent from the Panchnama that when the contraband substance was weighed along with the new plastic bag, the same was found to be 52.030 grams and after deducting the weight of the new plastic bag, i.e., 1.570, the same came to 50.460 grams. Now if we include the quantity of 0.52 grams of the power expected to be remained stuck inside the plastic bag, the quantity of the contraband substance would come to 50.980 grams which is above 50 grams and, therefore, falls under the category of commercial quantity. That apart, let us consider that the quantity of the contraband substance was 52.550 and the weight of the plastic bag was 2.090 grams. Even then after deducting the weight of the plastic bag of 2.090 grams from the total weight of the contraband substance of 52.550, it would come to 50.460 grams which is still in commercial quantity. This Court does not want to go into much detail as the same does not cut much ice as these are issues which do not go to the root of the matter warranting grant of bail and can be looked into at the time of trial as one doesn't know as to how and in what condition the contraband was weighed in both situations.

12. Therefore, looking into the entire circumstances of the present case and the fact that the contraband substance recovered in the present case is commercial in nature, there are no reasonable grounds for believing that the applicant is not guilty of the offence. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are not satisfied and thus, no benefit can be given to him at this stage. The bail application is, therefore, dismissed. Rule is discharged.

13. Nothing stated herein above shall tantamount to the expression of any

opinion on the merits of this case.”

Issue No.1

27. It is well-accepted that for a successive bail application, there has to be material change in the fact-situation or additional ground or reason for taking a different view. The change in the material fact-situation would imply not merely a cosmetic change. In the facts of the present case, learned advocate Mr. Bhatt for the applicant has emphasised on the aspect of procedural delay and latches on the part of the investigating officer while drawing the samples. The procedure for drawing of the samples had taken place much much prior to the filing of the earlier bail application and, therefore, I fail to understand how such a procedural aspect can be termed as 'change of circumstances', which had already been taken place much prior to the filing of the earlier application and was very much available with the applicant-accused to be argued in the earlier proceedings. Why the said ground was not raised in the earlier proceedings, is a question to be posed by the learned advocate for the applicant to himself. The law is well settled that an accused has a right to make successive applications for grant of bail but successive bail applications are permissible under the changed circumstances. The change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail applications were rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier applications. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which the application for bail of an accused that has been rejected earlier can be reconsidered.

28. It is trite law that successive bail applications under Section 439 Cr.P.C. in the same FIR, is not maintainable unless some changed circumstances is shown, otherwise, the exercise of jurisdiction to entertain successive bail application amounts to review of previous order of the same Court, which is not permissible as held by the Hon'ble Supreme Court in Hari Singh Mann vs. Harbhajan Singh Bajwa and others, reported in (2001) 1 SCC 169.

Issue No.2

29. Now what are the key circumstances that may warrant the filing of a subsequent bail application include changes in the factual or legal position, such as the filing of the charge sheet, framing of charges, delay in the trial, or deterioration in the health of the accused or their family members. The sole ground which is projected as the change of circumstances in the present

proceedings, is the procedural delay and latches on the part of the investigator while conducting the procedure for drawing of the samples which had taken place long back. The said ground does not, in any manner, come under any of the categories of 'changed circumstances' as mentioned above. The said ground was very much available with the applicant-accused from the very beginning. Thus, in my view, the thing that had already been taken place much prior to the filing of the application and was very much available throughout, cannot be termed as subsequent change of circumstance.

30. In *Ashok Pundalik Gavade v. State of Maharashtra*, reported in 2019 SCC OnLine Bom 155, the Division Bench of the Bombay High Court dismissed a third bail application filed by a convict in a case for the offences under Section 302 read with Section 34 IPC. In the said decision, the Bombay High Court, after referring to the decision in the case of *State of Maharashtra v. Buddhikota Subha Rao*, 1989 Supp 2 SCC 605, observed that there is an embargo on filing repeated bail applications on same facts to ensure some degree of finality to the order passed and to maintain judicial discipline and propriety. It was noted that the present application was not filed on the ground of a change in circumstances. It has been further held that "mere fact that some of the grounds which were available were not raised in the previous application or that the said grounds are not reflected in the previous order would not justify entertaining subsequent bail application. Suffice it to say that entertaining repeated prayers for bail on grounds which were already available or allowing another counsel to advance fresh arguments on the same facts would be against judicial discipline and propriety and will encourage abuse of process of law. Hence, we are not inclined to re-consider the merits of the matter."

31. In any view of the matter, this court is required to consider the present successive bail application within the bounds of law whether such successive bail application could be entertained. It is required to be mentioned that the aspect of delay or latches in carrying out a particular procedure in relation to the offence cannot be emphasised to claim the bail.

32. The Hon'ble Apex Court has time and again, while laying down guidelines, has observed that no hard and fast rule can be laid down and it depends on exercise of sound discretion depending upon the facts of each case where the balance has to be struck between the right of an individual accused and his liberty and the interest of the society at large. Therefore, with the increase in the drug trafficking crimes there has to be a fresh look if the criminal justice system and the rule of law are to prevail. There has to be some kind of deterrent impact, otherwise it would lead to giving a wrong signal that one can easily get bail after commission of the crime and the shortcomings of the system like delay in any procedural aspect of an offence could be taken advantage of. Therefore, the submissions made by learned advocate Mr. Bhatt cannot be readily accepted.

33. While deciding the present application, this Court has also kept in mind the repercussions that would be taken place if the present application is entertained.

Entertaining the present application would give rise to a tendency of filing repeated applications before the same Court for the same cause of action on same facts under the title of successive bail applications without there being any actual change of circumstances. Merely something was left out in the earlier proceedings, cannot be made a ground to file the subsequent application. The word 'left out' itself shows that a particular thing was already there in the knowledge of a particular person at the relevant point of time, which inadvertently could not be pressed into service by it. 'Change of circumstance' means the thing that takes place between the two cause of actions and was not in existence at the first in point of time.

34. In my view, the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the applicant has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail.

35. For the foregoing discussion, considering the fact that the present application is filed as successive bail application and as there are no fresh grounds made out, except the aspect of delay and laches on the part of the investigating officer in drawing of the samples, the present application cannot be entertained and it deserves to be rejected and accordingly stands rejected. Rule is discharged.