

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3949 OF 2024

BHALCHANDRA
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Imtiaz Umar Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Aniket Vagal a/w Ms. Savvy Kolhekar, Mr. Kunal Pednekar for
the Applicant.

Mr. C.D. Mali, APP, for the Respondent—State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 14th December 2024

PC:-

1. Heard Mr. Vagal, learned Counsel for the Applicant and Mr.
Mali, learned APP for the Respondent—State.

2. The Applicant i.e. Accused No.3 has preferred this regular
Bail Application under Section 439 of the *Code of Criminal
Procedure, 1973*. The relevant details are as follows:-

1.	C.R. No.	268 of 2023
2.	Date of registration of F.I.R.	05/10/2023
3.	Name of Police Station	Indiranagar Police Station, District – Nashik
4.	Section/s invoked	8(c), 20(b), 22(c) & 29 of the <i>N.D.P.S. Act, 1985</i>

5.	Date of incident	05/10/2023
6.	Date of arrest	15/10/2023
7.	Date of filing of Charge-sheet	30/03/2024

3. This Bail Application has been opposed by the Respondent – State of Maharashtra by filing an Affidavit dated 25th October 2024 of Sachin V. Chaudhari, Assistant Police Inspector, NDPS Cell, Crime Branch, Nashik City. The prosecution case is set out in Paragraph No.3 of said Affidavit dated 25th October 2024. The said Paragraph No.3 reads as under:-

“3. I say that the prosecution case in brief is as under :-

*(a) That the orig. complainant namely Assistant Sub Inspector Ranjan Punjaji Bendale, attached to NDPS Cell, Nashik City lodged FIR inter alia stating therein that on 05/10/2023 **ASI Ranjan Bendale got the information about the possession and selling of contraband by the accused No. 1 and 2.** Thereafter Ranjan Bendale, Assistant Police Sub Inspector, attached to N.D.P.S. Cell, Crime Branch, Nashik City reduced information in writing and produced the same before the senior police inspector Mr. Nalawade. It is the case of the Orig. Complainant/Informant that Mr. Nalawade sought the permission from Asst. Commissioner of Police for the raid. It is the case of the Orig. Complainant/Informant that thereafter, Asstt. Commissioner of Police, Crime Branch, Nashik City gave the permission for the raid and accordingly Panchas have been called. It is the case of the Orig. Complainant/Informant that thereafter pre-trap panchanama have been prepared in the office of NDPS cell Nashik City.*

(b) *It is the case of the Orig. Complainant/Informant that accordingly raid was conducted on accused No. 1 and 2 and during the course of raid, the search was carried out which resulted in the recovery of 54.5 gram of Mephedrone from the accused Nasrin @ Choti Bhabhi Imtiyaz Shaikh and 1.288 K.G. of Ganja from the co-accused Wasim Rafiq Shaikh. As the aforesaid accused persons were found in possession of the aforesaid contraband, necessary due procedure of law was followed in accordance with law.*

(c) *On the basis of the complaint lodged by the Orig. Complainant, offence vide CR No. 268/2023, u/secs. 8(c), 22(b), 22(c) and 29 of N.D.P.S. Act, was registered with Indira Nagar Police Station, Nashik City on 05.10.2023 against (1) Wasim Rafiq Shaikh and (2) Nasrin @ Choti Bhabhi Imtiyaz Shaikh and investigation was commenced and it was assigned to me as per direction of superior officers.”*

4. As far as the role of the present Applicant is concerned, the same is set out in Paragraph No.9, 12, 13, 14, 21, 22 of said Affidavit dated 25th October 2024 of Sachin V. Chaudhari, Assistant Police Inspector, NDPS Cell, Crime Branch, Nashik City. The said Paragraph No.12, 13 and 14 reads as under:-

“9. I say that during the course of investigation, it revealed that during interrogation of both the aforesaid accused, they disclosed the name of Applicant/ Accused namely Imtiyaz Umar Shaikh and they further disclosed that Applicant/ Accused Imtiyaz Umar Shaikh himself provided the aforesaid contraband to them. Accordingly Imtiyaz Umar Shaikh was arrested by the investigating agency on 15/10/2023. I further say that thereafter the said Applicant/ accused Imtiyaz Umar Shaikh was produced before the Learned Court i.e. Learned

JMFC, Nashik and the police custody was granted by the Learned JMFC Court, Nashik. During the course of interrogation of the Applicant/Accused No. 3 i.e. Imtiyaz Umar Shaikh, he was revealed that the contraband purchased from the accused No. 4 Salman Shakil Ahmad Falke. It is revealed that the Accused No. 2 is wife of this Applicant /Accused who is found contraband in possession, they are living together. I further say that the accused No. 3 had given the contraband to the Accused No. 2 for sale. Accordingly he was arrested by the investigating agency on 21/10/2023. During the course of investigation and the Accused no. 4 Salman Shakil Ahmad Falke revealed the role of the present Applicant/Accused No. 3 that he purchased the contraband from Accused No. 4. So that Applicant/Accused No. 3 is directly involved in the crime.

*12. I say that it is pertinent to note that during the course of investigation, it revealed that **the present Applicant/Accused No. 3 is in the main role to purchase and sale of aforesaid contraband i.e. Mephedrone.***

13. I say that during the course of investigation, it prima facie revealed that the present applicant/accused is involved in the business of sale and purchase of Mephedrone and he gets handsome money from the same.

14. I say that during the course of investigation, the investigating agency obtained Call Details Record (C.D.R.) of the present Applicant/ Accused hereinabove. I further say that it revealed from the said CDR Report that there were frequent and repetitive calls between the present Applicant/Accused No. 3 Imtiaz Umar Shaikh and accused Nos. 2, 4, and 6. I further say that it also revealed from the aforesaid C.D.R that the Orig. accused No. 4 namely Salman Shakil Ahmed Falke from his mobile No. 7738487400 had 30 calls with present

applicant / accused No.3 Imtiyaz Umar Shaikh on his mobile No. 8446219392. I say that even the present Applicant/Accused from his mobile No. 8446219392 had 207 calls with Orig. accused No. 6 i.e. Saddam Hussain Aslani Sarang on his mobile No.8793137158 and 748 calls with accused No.1 i.e. Vashim Rafik Shailch on his mobile No. 9763437868 and also 5541 calls with Accused No. 2 i.e. Nasrin @ Choti Bhabi on mobile No. 9527869277 and Mb No. 8830670551. I further say that even the present Applicant/Accused from his mobile No. 8446219392 had 120 calls with Accused No. 7 Karan Sontakke Mb No. 9921969654 and 342 calls on Mb No. 9325800767 of Accused No. 8 Irfan Shaikh Hereto annexed and marked as Exhibit F is the copy of the C.D.R Report.

21. I say that offence registered against the Applicant/ Accused is as under :

Sr.No.	Police Station	Sections	Status
1.	Indira Nagar C.R. No.100/2023	8(c), 20(b), ii (c)	Court pending

*22. I say that the main role of the present Applicant/Accused is that prima facie during the course of investigation, it revealed that the present Applicant/Accused is involved in commission of the aforesaid offence. **I say that the offence is serious in nature. I say that Mephedrone (MD) 54.5 grams was seized from the accused no. 2 Nasrin Imtiyaz Shaikh. I say that the said Mephedrone (MD) brought by the Applicant/ Accused No. 3 namely Imtiyaz Shaikh from Accused No. 4 namely Salman Shakil Ahmad Shaikh through the present accused No. 6.** I further say that apart from that during the course of investigation, the investigating agency obtained Call Details Record (C.D.R.) of the present Applicant/Accused hereinabove. I further say that it revealed from the said CDR Report that there were*

frequent and repetitive calls between the present Applicant/Accused and Orig. accused Nos. 2, 4, 6, 7 and 8. I say that this crystal clear goes to show that there is direct connection of the present Applicant/Accused in present crime. I say that the drug Mephedrone is dangerous for human consumption and against the society at large. I say that the sample of Mephedrone sent for C.A. report and the report thereof is positive. I further say that apart from that co-accused namely Wasim, Irfan, Samir Kabutar, Arif Bappa, Rehman are yet to be arrested. I say that if applicant is released on bail, then there is every possibility to abscond. 23. I say that as the Orig. Accused Nos.1 and 2 were found in possession of the aforesaid contraband, the offence was registered. I say that prima facie it revealed that the present Applicant/Accused acted supply and sale of the Mephedrone to other accused and he is involved in business of sale and purchase of said contraband. 24. I say that as far as compliance of section 50 of N.D.P.S. Act is concerned, the same has been followed in accordance with law.”

(Emphasis added)

5. There are total 12 Accused persons. Accused Nos.1 to 6 and 8 were arrested and Accused Nos.7 and 9 to 12 are absconding. The present Applicant is Accused No.3.

6. Mr. Vagal, learned Counsel for the Applicant submitted that the Accused No.4 – Salman Shakeel Ahmed Falke has been granted bail by this Court by Order dated 19th July 2024 passed in Bail Application No.2489 of 2024. He further submitted that the

Accused No.5 – Shabbir *alias* Aiba Abdul Aziz Menon has been granted bail by this Court by Order dated 20th August 2024 passed in Bail Application No.2879 of 2024 and the Accused No.6 has been granted bail by this Court by Order dated 27th August 2024 passed in Bail Application No. 2655 of 2024. He further submits that the trial Court has granted bail to Accused No. 8 by Order dated 6th November 2024 passed below Exhibit 43 in Special Case (NDPS) No.88 of 2024. He therefore submits that the Applicant is entitled to be released on bail as the Applicant is claiming parity on the basis of these Orders.

7. Mr. Vagal, learned Counsel for the Applicant submitted that except for the statement of the co-accused, there is no material on record to connect the present Applicant with the said crime. He submitted that the present Applicant was not found on the spot with contraband. He submitted that the present Applicant is in custody since more than 1 year and 02 months. He submitted that there is no recovery at the instance of the present Applicant.

8. It is the submission of Mr. Vagal, learned Counsel appearing for the Applicant that the Applicant was arrested on 15th October

2023. The Charge-sheet was filed on 30th March 2024. He submitted that as far as the present Applicant is concerned, the only material against him is that he called Accused No.2, 4 and 6 from his cell phone on number of occasions. He submitted that except these call details there is no material whatsoever against the present Applicant. He relied on a decision of this Court in ***Saddam Hussain Qureshi vs. Union of India***.¹ and more particularly on Paragraph Nos.11 and 12 of the same. He also relied on the decision of Gujarat High Court in ***Yash Jayeshbhai Champaklal Shah vs. State of Gujarat***² and emphasized Paragraph No.5 of the same. He also relied on the decision of the Supreme Court in ***Bharat Chaudhary vs. Union of India***³ and more particularly on Paragraph Nos.13 and 14 thereof. He submitted that there are no other antecedents.

9. On the other hand, Mr. Mali, learned APP for the Respondent-State strongly opposed the Bail Application. He pointed out various contentions raised in Affidavit-in-Reply dated 25th October 2024 of Sachin V. Chaudhari, Assistant Police

1 2024 SCC OnLine Bom 1096

2 2022 SCC OnLine Guj 271

3 (2021) 20 SCC 50

Inspector, NDPS Cell, Crime Branch, Nashik City. He more particularly relied on Paragraph Nos.9, 12, 13, 14, 21 and 22 of the said Affidavit-in-Reply. He submitted that the material on record clearly shows that the present Applicant was in constant contact with Accused Nos.2, 4 and 6. He submitted that the commercial quantity of the contraband was found in possession of Accused No.2- wife of the Applicant and Accused No.1. He submitted that apart from the antecedents mentioned in the Affidavit-in-reply, there are two more antecedents against the Applicant bearing C.R. No. 167 of 2018, registered with Indira Nagar Police Station, Nashik on 21st June 2018 under Sections 354 (A)(D), 143, 147, 148, 149 and Section 12 of POCSO Act. He submits that there is one more antecedent bearing C.R. No.123 of 2019 registered with Indira Nagar Police Station, Nashik on 10th April 2019 under Section 37(1)(3) read with Section 135 of the Bombay Police Act. He therefore submitted that the Bail Application be rejected. He submitted that the involvement of the Applicant in the alleged offence is made out.

10. Before considering the rival contentions, as the offence is under *Narcotic Drugs and Psychotropic Substances Act, 1985*

(“NDPS Act”), it is necessary to set out Section 37 of the NDPS Act, wherein conditions to be mandatorily complied before releasing an Accused on bail, are set out. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

(Emphasis added)

Thus, as per Section 37 of the NDPS Act, following requirements are mandatorily to be complied with before releasing an Accused on bail:

(i) The Public Prosecutor is to be given an opportunity to oppose the application seeking bail;

(ii) Where the Public Prosecutor opposes the application:-

(a) The court is required to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence;

(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.

11. In the present case, Mr. Mali, learned APP has filed Affidavit-in-Reply of Sachin V. Chaudhari, Assistant Police Inspector, NDPS Cell, Crime Branch, Nashik City, and has opposed the Bail Application by raising several contentions. Therefore, the first requirement is complied with.

12. Thus, what is required to be considered is that whether this Court is satisfied that there are reasonable grounds for believing

that the Applicant is not guilty of such offence and that he is not likely to commit any offence while on bail.

13. In the present case, the only material against the present Applicant is that he was in constant telephonic contact with co-Accused namely Accused Nos.2, 4 and 6. Mr. Mali, learned APP also submitted that Accused No.2 *inter alia* in whose possession the contraband was found is the wife of the present Applicant. He submitted that these two circumstances clearly show that the Applicant is involved in the crime.

14. The Accused No.2 in whose possession *inter alia* contraband was found is the wife of the present Applicant. Merely on the ground that there were several calls made by the Applicant to the Accused No.2 cannot be the ground for assuming involvement of the Applicant in the crime and the said material cannot connect the Applicant with the crime.

15. As the only material on record against the Applicant is that the Applicant was in constant contact with Accused Nos.2, 4, and 6, Mr. Vagal, learned Counsel appearing for the Applicant has

relied on Paragraph No.5 of the decision in *Yash Shah* (supra), which reads as under:

*“5. Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in and around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused. However, screenshot of one of the whatsapp chat in between the co-accused shown to the Court, there is hardly anything which connects the applicant with the present offence or even asserting that he ordered for the same which were to be delivered by the accused found in possession of contraband. In absence of any other material, which is still to be retrieved from the devices of the mobile phone and information thereon which is still awaited, as considered by the Supreme Court in the case of *Bharat Chaudhary* (Supra) said material cannot be considered to be a sufficient material to establish any live link with the co-accused who were found in the possession of contraband.”*

(Emphasis added)

Thus, in the case before Gujarat High Court the call data records revealed that the Accused was in contact with the co-accused who were found in possession of contraband in and around the time of the incident. In the said decision of Gujarat High Court, it has been

held that, since there is no recording of conversation between the Accused, mere telephonic contact with the co-Accused, who were found in possession of contraband cannot be treated as corroborative material in absence of substantive material found against the Accused. The material on record shows that the present Applicant had frequently contacted Accused Nos.2, 4 and 6 on cell phone and except that material there is no other material against the present Applicant. Also it is required to be noted that the Accused No.2 is the wife of the Applicant and the circumstance that the Applicant was calling Accused No.2 frequently cannot be the incriminating material in absence of evidence of the contents of the conversation.

16. Mr. Vagal, learned Counsel appearing for the Applicant has also relied on Paragraph Nos.13 and 14 in *Bharat Chaudhary* (supra). The said Paragraph Nos.13 and 14 read as under:

“13. 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 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 at the office or at the residence of A-4 at Jaipur, on 16-3-2020. **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.***

*14. 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 15-7-2021 [Union of India v. Bharat Chaudhary, 2021 SCC OnLine Mad 6554] . **This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246] . The impugned order [Union of India v. Bharat Chaudhary, 2021 SCC OnLine Mad 6554] qua A-4 is, accordingly, quashed and set aside and the order dated 2-11-2020 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.”***

(Emphasis added)

The Supreme Court has also observed that only sending some WhatsApp message which have been later downloaded from the

cellular phone and devices seized from the Accused cannot be treated as sufficient material to establish a live link between the Accused persons.

17. In this particular case, admittedly the contraband was found in possession of Accused Nos.1 and 2. As per the prosecution case, the said contraband material was purchased by the Accused Nos.1 and 2 from Accused No.3- Imtiaz Umar Shaikh (present Applicant) and Accused No.3 had purchased the same from Accused No.4 and the Accused No.4 has purchased the same from Accused No.6. Except the material in the form of Call Details Record (C.D.R.) showing that the present Applicant i.e. Accused No.3 had called on number of occasions Accused Nos.2, 4 and 6, there is no other material whatsoever against the present Applicant. Thus, there are reasonable grounds to believe that the Applicant was not involved in the said offence.

18. Admittedly, there is one antecedent with respect to N.D.P.S. offence against the present Applicant being C.R. No. 100 of 2023, registered with Indira Nagar Police Station under Sections 8(c) 20(b)(ii) and (c) of the N.D.P.S. Act. In the said case, the Applicant

has been released on bail by Order dated 25th May 2023 passed by learned Additional Sessions Judge, Nashik below Exhibit-1 in Criminal Bail Application No. 938 of 2023. In the said Order, while granting bail, the learned Additional Sessions Judge has observed that the contraband i.e. ganja which was found in the possession of the Applicant is 8.546 kgs. which is an intermittent quantity and not the commercial quantity.

19. Mr. Aniket Wagal, learned Counsel appearing for the Applicant relied on judgment of the learned Single Judge in the case of **Smt. Salma Suleman Shaikh Vs. State of Maharashtra**⁴. In the said case also, there was one antecedent. In the said case, in paragraph No.7, a learned Single Judge has held as follows :

“Having heard both sides, I have gone through the documents on record. I have also perused the FIR and other documents, which forms the part of charge-sheet. **Admittedly, the applicant was found in possession of non-commercial quantity of ganja. The Special Court has granted bail to the co-accused. The rigors of Section 37 are not attracted in view of the fact that non-commercial quantity was allegedly recovered from the applicant.** The application preferred by the applicant was rejected by the Special Court on the ground that there are antecedents against her. In view

⁴ Cri. BA No. 1648 of 2018 decided on 20th August 2018

of the decision of this Court in the case of **Noor Mohammed Shaikh** (supra), there is nothing on record to indicate that the applicant is involved in the cases which would attract the conditions stipulated under Section 437 of the Code of Criminal Procedure.”

20. Thus, although there is one antecedent against the Applicant as the quantity found is non commercial as held in the said case of Smt. Salma Suleman case (supra), the rigors of Section 37 are not attracted. As far as other antecedents are concerned, they are not NDPS offences and therefore they will not be relevant for consideration of twin conditions as contained in Section 37.

21. Accordingly, the Applicant can be enlarged on bail by imposing stringent conditions.

22. In view thereof, the following Order:-

ORDER

(a) The Applicant - Imtiaz Umar Shaikh be released on bail in connection with C.R. No.268 of 2023 registered with the Indiranagar Police Station, District - Nashik on his furnishing PR. Bond of Rs.3,00,000/- with one or two local solvent sureties in the like amount.

- (b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicant shall report to the Indiranagar Police Station, District - Nashik twice a week i.e. on every Monday between 11:00 a.m. and 1:00 p.m. and on Thursday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial.
- (d) The Applicant 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 such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

23. The Bail Application is disposed of accordingly.

24. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]