

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 4007 OF 2024

Mohd. Ajmal Kasam Shaikh ...Applicant
Versus
State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO. 3885 OF 2024**

Sarfaraz Shabir Ali Khan ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Anil Lalla, a/w Rithika Yerra and Yash Pulekar, for the
Applicant in BA/4007/2024.

Mr. Taraq Sayed, a/w Anish Pareira and Ashwini Achari, for
the Applicant in BA/3885/2024.

Mr. H. J. Dedhia, APP for the State in BA/4007/2024.

Mr. A. A. Naik, APP for the State in BA/3885/2024.

PSI Sandip Rahane, DCB, CID, Unit-6, Chembur, Mumbai,
present.

**CORAM: N. J. JAMADAR, J.
DATED: 20th DECEMBER, 2024**

ORDER:-

1. The applicants, who are arraigned in C.R. No.172 of 2023 registered with Navghar Police Station (DCB CID Unit VI, Mumbai, CR No.56 of 2023), for the offences punishable under Sections 420, 354, 468, 471 of the Indian Penal Code and Sections 20, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act"), have preferred these applications to enlarge them on bail.

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2. The gravamen of indictment against the applicants and the co-accused is that :

(i) On 15 August 2023, specific information was received at Anti-Narcotic Cell (ANC), Mumbai that Sahil Ramzan Ali Khan @ Massa (A1), Sarfaraz Shabbirali Khan (A7), the applicant in BA/3885/2024, and Ali Javed Jafar Mirza (A12) were indulging in trafficking in drugs in huge quantity through their associates Shamsuddin Shah (A3), Imran Pathan (A4), Mohd. Tausif Shaukat Ali Mansuri (A5), Mohd. Ismail Salim Siddhique (A6) and others, and, on that day, between 11.30 p.m. to 12.00 midnight, they were to arrive in one blue Ertiga Car bearing No. MH-04/KF-1514 and another Creta Car bearing No. MH-04/GZ-2772 to sell mephedrone near Anand Nagar Toll Naka, Mulund, Mumbai. A surveillance was conducted.

(ii) At 12.05 a.m. on 16th August 2023, as informed, a blue Ertiga Car bearing No. MH-04/KF-1514, came on the southern flank of Thane Mumbai Road. The car was intercepted. Mohd. Ajmal Kasam Shaikh (A2), the applicant in BA/4007/2024, co-accused Sahil Ramzan Ali Khan (A1), Mohd. Tausif Shaukat Ali Mansuri (A5), Mohd. Ismail Salim Siddiqui (A6) and Imran Pathan (A4) alighted from the said car. They were accosted. It is alleged, each of them was apprised of their

right to be searched before the Gazetted Officer or Magistrate. As they declined to avail the said right, personal search was conducted in the presence of the panch witnesses. In the search of Sahil Khan (A1), 62 gms of mephedrone was recovered. From the possession of the applicant Mohd. Ajmal Kasam Shaikh (A2) 54 gms. of mephedrone, Shamsuddin Shah (A3) 31 gms of *charas*, Mohd. Tausif Shaukat Ali Mansuri (A5) 14 gms. of mephedrone, and Mohd. Ismail Siddiqui (A6) 18 gms, mephedrone was recovered. In the search of Imran Pathan (A4), 20 gms. of mephedrone was recovered.

(iii) Creta Car bearing No. MH-04/GZ-2772 was also intercepted. Sarfaraz Khan (A7), the applicant in BA/3885/2024, Priyanka Karkour (A9), Mohd. Shakil Khan and Bambaiya Hussain alighted from the said car. In the search of the applicant Sarfaraz Khan (A7), 58 gms. mephedrone and Priyanka (A9) 14 gms. mephedrone was recovered. Contraband articles were seized.

3. At the outset, Mr. Anil Lalla, the learned Counsel for the applicant Mohd. Ajmal Shaikh (A2) in BA/4007/2024 and Mr. Taraq Sayed, the learned Counsel for the applicant Sarfaraz Shabir Ali Khan (A7) in BA/3885/2024, submitted that there is significant disconnect in the allegation in the FIR as regards the

contraband substance which was allegedly found in the possession of the applicants and CA Report. The prosecution proceeded on the premise that the substance found in the possession of the applicants and co-accused was mephedrone and on that count the applicants were detained for 180 days. But CA Report reveals that the substance allegedly found in possession of the applicant and co-accused was Ketamine. The total quantity of the Ketamine allegedly found in possession of the applicant and co-accused is intermediate quantity. Therefore, on this count alone, the applicants deserve to be enlarged on bail as the interdict contained in Section 37 of the NDPS Act, 1985 would not operate.

4. In addition, Mr. Anil Lalla, the learned Counsel for the applicant Mohd. Ajmal Kasam Shaikh (A2), submitted that there was non-compliance of the statutory mandate contained in Section 42(2) of the NDPS Act, 1985. The compliance of the provisions contained in Section 50 of the NDPS Act, 1985 is also infirm. At any rate, the applicant cannot be roped in by invoking the provisions contained in Section 29 of the NDPS Act, 1985. Moreover, the applicant has been in custody since 16th August, 2023. In the facts of the case, the trial would take considerable time. Thus the applicant be enlarged on bail.

5. Mr. Sayed, the learned Counsel for the applicant - Sarfaraz Shabir Ali Khan (A7) in BA/3885/2024, submitted that there is no nexus between the applicant and the occupants of the Ertiga Car. In the absence of such nexus, neither the aggregate quantity of the contraband substance allegedly found in possession of all the accused can be taken into account nor the provisions contained in Section 29 of the NDPS Act, 1985 can be invoked. Mr. Sayed emphasised that the very detention of the applicant for six months on the premise that commercial quantity of mephedrone was found in possession of the applicant and the other co-accused being illegal, the applicant deserves to be enlarged on bail.

6. The learned Counsel further submitted that though the applicants have been arraigned for the offences under the NDPS Act, 1985, in other cases, the said factor does not disentitle the applicants to seek enlargement on bail.

7. Mr. Dedhia, the learned APP for the State in BA/4007/2024, resisted the prayer for bail. It was fairly submitted that the prosecution had initially proceeded on the premise that mephedrone was found in possession of the applicant and co-accused and CA Report revealed that the substance found in possession of the applicant and the co-

accused was Ketamine and the aggregate quantity i.e. 350 gms. is an intermediate quantity. Yet, having regard to the antecedents of the applicant he does not deserve to be enlarged on bail.

8. Mr. Naik, the learned APP for the State in BA/3885/2024, also opposed the prayer of the applicant on a similar line.

9. It is necessary to note that by an order dated 10th March, 2024, this Court has rejected the Bail Application No.3312 of 2023 of Kaynaat Sahil Khan (A10), the wife of Sahil Khan (A1). Similarly, by an order dated 25th June, 2024 in BA/1100/2024 this Court was persuaded to reject the bail application of Imran Pathan (A4). Whereas, by an order dated 26th August, 2024 in BA/3042/2024 another co-accused Sayed Sajjad Shaikh (A11) was enlarged on bail as he was apprehended on the basis of the disclosure statement made by Kaynaat Khan (A10) and only 6.16 gms. mephedrone, was found in possession of the said co-accused.

10. This Court must confess that when the bail applications of Kaynaat Khan (A10) and Imran Pathan (A4) were rejected, the prosecution proceeded on the premise that the substance found in possession of the accused was primarily mephedrone and *charas*. Thus, in the order dated 25th June, 2024 in the case of

Imran Pathan (A4) in BA/1100/2024, the prayer for bail was negatived observing *inter alia* as under:

“13. As noted above, the material on record indicates that varying quantity of contraband substance were recovered from each of the accused, who were apprehended. Sahil (A1) was found in possession of 62 gms, Mohd. Ajmal Kasam Shaikh, 54 gms of MD, and rest of the accused were also found in possession of contraband substance, though it did not exceed the commercial quantity. The prosecution alleges, over 350 gms of MD/ketamine/charas was recovered from the applicant and the co-accused.

14. In the aforesaid scenario, I find substance in the submission of the learned APP that the entirety of the circumstances is required to be looked into and not only the quantity of the contraband found in possession of the applicant. There was specific information. Cars were intercepted based on such specific information. The applicant was at the wheel of the car. The applicant and co-accused were all found travelling together. In all, 350 gms and above contraband substance was recovered from the applicant and co-accused. In such circumstance, an inference of the applicant being privy to the crime can be legitimately drawn.”

11. The situation which now obtains is that, apart from Shamsuddin Shah (A3), from whose possession 31 gm. *Charas* was allegedly recovered, from all the other occupants of both the vehicles Ketamine was allegedly recovered. As noted above, the recovery of 6.16 gms. Mephedrone from Sayed Shaikh (A11) was subsequent and pursuant to the disclosure made by Kaynaat Khan (A10).

12. In my considered view, the situation which has *now* emerged is of material significance. Under Entry 238E of the Notification, the small quantity of Ketamine is 10 gm. and

commercial quantity is 500 gms. The small quantity of *charas* is 100 gms and commercial quantity is 1 kg. Resultantly, even if the cumulative quantity of the contraband substance found in possession of all the occupants of both vehicles, discounting the submissions on behalf of the applicants that there is no material to establish the nexus between the occupants of both the vehicles and to rope them in as confederates in the conspiracy, the quantity of contraband substance would fall within the range of intermediate quantity.

13. In this view of the matter, I find substance in the submissions on behalf of the applicants that *prima facie* the interdict contained in Section 37 of the NDPS Act may not operate. In view of the aforesaid fact-situation, I do not deem it necessary to delve into other submissions canvassed on behalf of the applicants regarding the non-compliance of the statutory provisions. Suffice to note that there were no financial transactions between the applicants and co-accused, especially Sahil Khan (A1), the alleged kingpin, and Kaynaat Khan (A10).

14. It is true, both the applicants have antecedents. The applicants have been enlarged on bail in those cases. However, since the Court finds the interdict contained in Section 37 of the NDPS Act, 1985 may not operate, the submission on behalf of

the applicants that the antecedents of the applicants may not thus disentitle them to get the relief of bail appears to carry substance.

15. In the light of the situation which has emerged consequent to the substance having been found in possession of the applicants and co-accused being Ketamine, their pre-trial detention becomes even more tenuous. The applicants are in custody since August, 2023. Having regard to the number of accused, the number of witnesses the prosecution may be required to examine and the large pendency of cases, it is extremely unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise the discretion in favour of the applicants.

16. Hence, the following order.

: O R D E R :

- (i) Applications stand allowed.
- (ii) Mohd. Ajmal Kasam Shaikh, the applicant in BA/4007/2024 and Sarfaraz Shabir Ali Khan, the applicant in BA/3885/2024 be released on bail in C.R. No.172 of 2023 registered with Navghar Police Station (DCB CID Unit VI, Mumbai, CR No.56 of 2023) on furnishing a P. R. Bond of Rs.1,00,000/-, each, with one or

more sureties in the like amount to the satisfaction of the learned Special Judge.

- (iii) The applicants shall mark their presence at DCB CID Unit VI, Mumbai, on the first Monday of every month between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants 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 the facts to Court or any police officer.
- (v) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicants shall not indulge in identical activities for which they have been arraigned in this case.
- (vii) The applicants shall regularly attend the proceedings before the jurisdictional Court.
- (viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the

purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications stand disposed.

[N. J. JAMADAR, J.]