



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 121 OF 2025

Shaikh Shabbir S/o Shaikh Shafi

VERSUS

The State Of Maharashtra

- Mr. S. M. Nannaware, Advocate for the Applicant
- Mr. D. B. Bhanage, APP for the Respondent/State

CORAM : R. M. JOSHI, J

DATE : FEBRUARY 17, 2025

PER COURT :

1. Applicant seeks bail C.R. No. 131/2024 registered with Vedant Nagar Police Station, Dist. Aurangabad for the offences punishable under Sections 8-C, 21-B, 22-B & 29 of the Narcotic Drugs and Psychotropic Substances Act and Sections 37(1) & 135 of the Maharashtra Police Act.

2. The first information report indicates that on the basis of secret information police raided the spot of the incident and accosted the present Applicant. He was found in possession of contraband articles.

3. Learned Counsel for Applicant submits that now

the investigation is over and charge-sheet is filed. By referring to the FIR, it is submitted that the procedure as per the Rules of 2022 under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**the Act**') are not complied with. He drew attention of the Court to the observations indicating that the samples were drawn at the spot itself. He drew attention of the Court to the order passed in Bail Application No. 639/2024 dated 14.08.2024 wherein it is held that non compliance of the procedure laid down by the Rules of 2022 entitles the accused for the bail. He further submits that alleged recovery of the narcotic drugs is not commercial quantity. He further claims that there is no criminal history against the Applicant.

4. Learned APP opposed the application on the ground that there is evidence to show seizure of the contra band articles from the present Applicant. However does not dispute the fact that it is non commercial quantity of the contra band. He opposed the application on the ground that the CDRs are supporting his involvement in the crime.

5. Now charge-sheet is filed. This Court while passing order in BA/639/2024, dated 14.08.2024 (supra) has held in paragraph nos. 50 to 53 as under:

50. As far as drawing samples on the spot is concerned, recovery was done from the plastic bags, which were in his hand. The Police took personal or physical search as well as the search of the bags containing contraband. Nothing has been recovered from his person. The contraband has been seized from the plastic bag.

51. In the case of applicant - Ajay s/o. Raju Kothari, the Investigating Officer served notice upon him for personal search of photographer and police officers. The notice allegedly issued under Section 50 of the NDPS Act nowhere discloses that the accused was apprised of his right to have a physical search before the Gazetted Officer only. Therefore, there was no compliance with Section 50 of the NDPS Act.

52. So far as Section 52-A of the NDPS Act is concerned, from the case laws discussed above, it can be summarized that upon seizure of the contraband it is to be forwarded to the officer-in-charge of the nearest police station or to the Officer empowered under Section 53, who has to prepare an inventory of seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified the samples drawn in presence of Magistrate and list thereon

being certified alone would constitute primary evidence for the purpose of trial. Therefore, submission of the learned A.P.P. that merely taking the samples soon after the seizure on the spot is not bad in law and it could not raise the suspicion about the seizure, could not be appreciated.

53. The Hon'ble Supreme Court has crystalized Section 50 and 52A of the NDPS Act and laid down the law that compliance of Section 50 and 52A of the NDPS Act is mandatory.

6. As far as present case is concerned, from the FIR itself it is clear that the samples were not drawn in presence of the Magistrate. Thus, there is apparent non compliance of the procedure laid down by the Rules of 2022 framed under the Act. This Court, therefore, finds substance in the contention of the learned Counsel for the Applicant that in view of the order passed by this Court supra Applicant is entitled for bail. There is no criminal history behind Applicant and he is not likely to flee from justice.

7. In view of above, application is allowed.
Hence, the order:

O R D E R

(i) Applicant in connection with C.R. No.

131/2024 registered with Vedant Nagar Police Station, Dist. Aurangabad for the offences punishable under Sections 8-C, 21-B, 22-B & 29 of the Narcotic Drugs and Psychotropic Substances Act and Sections 37(1) & 135 of the Maharashtra Police Act, be released on bail on furnishing PB and SB of Rs. 20,000 (Rupees Twenty Thousand Only) with one solvent surety in the like amount.

- (ii) He shall not contact the witnesses directly or indirectly.
- (iii) He shall not interfere with the evidence in any manner whatsoever.

(R. M. JOSHI, J.)