



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO. 1008 OF 2025**

Abhijit Annasaheb Amrutrao,
Age: 41 years, Occ. Priest &
Trader of the fire crackers,
Resident of: At Tulajapur, Tq. Tulajapur,
Dist. Dharashiv.

....Applicant

Versus

1. The State of Maharashtra
Through – Investigation Officer,
In Crime No.22/2025, dated 15.02.2025
Tamalwadi Police Station,
Tq. Tulajapur, Dist. Dharashiv.

2. The Superintendent of Police,
Through, The Superintendent of Police
in Crime No.22/2025,
Tamalwadi Police Station,
Tq. Tulajapur, Dist. Dharashiv.

....Respondents

Mr. V. D. Sapkal, Senior Advocate i/by Mr. R. N. Patil for the Applicant.
Mr. A. V. Lavte, APP for the State.

**CORAM : ADVAIT M. SETHNA, J.
RESERVED ON : 3 JULY 2025
PRONOUNCED ON : 14 JULY 2025**

JUDGMENT:-

1. The Applicant in the present Application has filed the present proceedings as he apprehends arrest. The present proceedings relate to crime no. 0022 of 2025. The FIR is lodged on 15 February 2025 at 03.28 hours by the Tamalwadi Police Station, Dist. Dharashiv. The alleged offences are under Sections 21(b) and 8(c) of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (“**NDPS Act**”). The occurrence of the offence is stated to have taken place on 14 February 2025. There are three accused persons in the FIR. The present Applicant was arrayed as accused No.31 in the said charge-sheet dated 16 April 2025, in Special Case No.36 of 2025. The alleged offences under the Sections including in the charge-sheet are Section 8(c), 21(b), 27 and 29 of the NDPS Act.

Case in FIR:-

2. The case of the prosecution as revealed from the report lodged by the Informant PSI Sudarshan Bharat Kasar, Crime Branch, Osmanabad is that they received secret information of transportation of narcotic drugs and psychotropic substances in one vehicle. Accordingly, the police set a trap within jurisdiction of Tamalwadi toll plaza. They apprehended a vehicle i.e. Hyundai Xcent model car of dark blue colour proceeding from Solapur to Tulzapur road. The police having made inquiries with the three persons in the car, gave evasive answers. The Tamalwadi police complied with the mandatory procedure laid down in the NDPS Act for search, seizure of the narcotic drugs and psychotropic substances kept in the said vehicle. After conducting panchnama and following the due procedure under the NDPS Act, the said Mephedrone powder a psychotropic substance, weighing 45 grams (50gms being the prescribed commercial quantity under the schedule to the NDPS Act) was then seized from the custody of three accused persons as named in the FIR valued at Rs. 10,75,000/-. In such circumstances, the Informant lodged a report with Tamalwadi Police Station giving rise to registration of Crime No.222 of 2025 in respect of which, the said FIR was lodged on 15 February 2025. Subsequently, as noted above, a charge-sheet is filed where the present Applicant is arrayed as accused No.31.

Submissions:-

3. Mr. Sapkal, learned senior counsel for the Applicant would first submit on the query of the Court with regard to maintainability of

anticipatory bail in an NDPS case that such application is both maintainable and entertainable and maintainable under the scheme and provisions of the NDPS Act. There is no bar under Section 37 of the Act to maintain such ABA more particularly in a case where the Applicant/accused has no role so as to attract the rigours of Section 37 of the NDPS Act. He would rely on certain judgments cited, which are discussed below in support of his submissions in this regard. He would submit that at the highest, the role attributable to the Applicant is of a consumer where the maximum punishment prescribed under Section 27 of the NDPS Act is of one year. In such situation, he would submit that this would be a fit case for grant of ABA to this Applicant.

4. Without prejudice to the above, on merits, Mr. Sapkal would submit that the Applicant is falsely implicated in the present crime. He was neither present at the spot of the incident nor has he committed any act which would tantamount to an offence under the NDPS Act. The only role attributed to this Applicant by the prosecution in the charge-sheet is that of consumption of alleged drugs which is also denied due to lack of material in this regard. Thus, the offence can at the highest be attributable to Section 27 of the NDPS Act against the Applicant. According to him, the Applicant is the priest of Tulzabhavani Mandir. He is engaged in the business of selling firecrackers. Therefore, the financial transactions as alleged by the prosecution qua this Applicant relates to payments from the sale of firecrackers. Completely contrary to this, the prosecution has falsely roped this Applicant, who is completely innocent. His false implication in the present crime is premised on alleged monetary transactions, camouflaging it as sale/purchase of narcotic drugs and psychotropic substances. This submission is made with particular reference to paragraph 6 (page 7) of the ABA, where it is stated that the present Applicant has been added as an accused on the pretext of cash and other alleged financial transactions with the main accused one Yuvraj Dalvi (accused No.2), Sumit Shinde (accused

No.15), Vishal Sonji (accused No.30). However, the prosecution has not even remotely demonstrated that such payments are in any manner connected with sale/purchase of contraband. Even taking the prosecution's case at its face value Mr. Sapkal would submit that as the charge-sheet would indicate the allegation against the present Applicant is only under Section 27 of the NDPS Act which is clearly in respect of consumption and nothing more. According to him, as the charge-sheet fails to even remotely indicate the name/nature/type of the drug of contraband consumed, applicability of Section 27 qua this Applicant is also ruled out. It is only an inference which is drawn by the prosecution on the basis of statements of witnesses which are of no legal assistance to the prosecution. In any event, the offence under Section 27 is maximum one year and is thus bailable as held by the Bombay High Court in the judgment of ***Stefan Mueller Vs. State of Maharashtra***¹, which holds the field. Mr. Sapkal would *inter-alia* rely on the decision of the Supreme Court in ***Ragini Dwivedi Vs. State of Karnataka***² to submit that if the offence alleged is primarily under Section 27 of the NDPS Act for consumption of drugs, section 37 was wrongly invoked by the trial court and High Court. Even on health grounds, the Applicant has undergone angioplasty and has been operated for heart block and insertion of stent. He also has to undergo a surgery.

5. He would urge that as the charge-sheet is also filed, there is no necessity of custodial interrogation of the Applicant and the anticipatory bail of the Applicant deserves to be allowed.

6. Per contra, Mr. Lavte, learned APP would vehemently object to the submissions made by the learned senior counsel Mr. Sapkal. He would first submit that the Courts, including the Supreme Court have time and again held that anticipatory bail should not be granted in NDPS cases.

¹ 2010 ALL M.R. 2503

² (2021) 16 SCC 719

Considering such position, the anticipatory bail in the present facts and circumstances, is at the threshold not maintainable. He would rely on the charge-sheet, more particularly on the statements of independent persons recorded during investigation who have specifically named this Applicant. These are not co-accused but are independent witnesses, whose statements would have evidentiary value. He would further submit that investigation would reveal that the Applicant has monetary / financial transactions with the main accused persons charge sheeted i.e. Vishal Sonji (accused No.30), one of the sellers of the contraband as well as the other accused Yuvraj Devidas Dalvi and Sumit Shinde from whom the Applicant has transacted and paid different amounts on different dates, some of which have also been set out in the Application at paragraph 6. There are several such transactions. There are also CDR records between the Applicant and the co-accused Sumit Shinde, who happens to be one of the sellers of the said contraband. There is no explanation coming-forth from the Applicant in this regard. At this *prima facie* stage, in a case under NDPS Act, such material cannot be overlooked. As there are about 15 persons still absconding, there is a possibility of this Applicant influencing the witnesses which cannot be discarded at this stage.

Mr. Lavte would refute the submissions of Mr. Sapkal that the offence under Section 27 being that of one year is bailable. He would refer to the decision of the Bombay High Court in ***Karishma Prakash Vs. Union of India & Ors.***³ to submit that in light of conflicting decisions including that of in ***Stefan Mueller*** (supra) the Bombay High Court has made a reference to a Larger Bench which is pending. Mr Lavte would submit that the decision in ***Stefan Mueller*** (supra), according to which the offence under Section 27 is only related to consumption and is thus bailable does not lay down the correct legal position. He would contend that in order to unearth the money trail

³ Order dated 12 July 2022 in Anticipatory Bail Application No.1998 of 2021.

and get to the root of the transactions qua the Applicant with the other accused and/or co-accused persons, custodial interrogation of the Applicant is warranted and thus the anticipatory bail of the Applicant should be rejected.

Findings:-

7. At the very outset, one of the issues that incidentally arises for consideration in these proceedings is the very maintainability and/or entertainability of an Anticipatory Bail Application preferred under the provisions of the NDPS Act. In this context on this very issue, at the threshold, it is apposite to refer to the decision of the Supreme Court in ***Muraleedharan Vs. State of Kerala***⁴. In the operative part (in paragraph 7) of the said judgment the Supreme Court had the occasion to consider and interpret Section 37 of the NDPS Act in the context of bail to also hold that it is incomprehensible how the position would be less different, when the accused approaches the Court for pre-arrest bail knowing that he would also be implicated as an accused. In this context, the Supreme Court stressed the need for custodial interrogation in such cases, more particularly, to unearth all links involved in the criminal conspiracy committed by the persons concerned. This Court cannot lose sight of the said decision. The judgment gainfully referred to the decision of the Supreme Court in ***Union of India Vs. Ram Samujh & Ors.***⁵ where the Supreme Court observed that in a murder case accused commits murder one or two persons while those dealing in narcotic drugs are instruments in causing death to innocent young victims, who are vulnerable, causing a deleterious effect and deadly impact on the society, being a hazard to the society, holding that even if they are released temporarily in all probability they would continue their nefarious activities of trafficking and/or dealing in intoxicants, clandestinely. Such telling observations of the Supreme Court in matters under the NDPS Act, cannot

⁴ AIR 2001 SC 1699

⁵ 1999 SUPP 2 SCR; 76

be overlooked.

8. Adverting to the given facts, it is true that a charge-sheet filed in the present proceedings. It also appears that that the Applicant is charged mainly under Section 27. The charge-sheet also refers to Section 8(c) read with 21(b), 29 of the NDPS Act. On Mr. Sapkal's submission that the Applicant is not even a consumer of the alleged contraband even going by the record, it appears that such contention at this preliminary stage cannot be accepted as the whole truth and ought to be taken with a pinch of salt. This is inasmuch as paragraph 6 of the application itself reveals several financial transactions between the Applicant and the main accused Yuvraj Dalvi (accused No.2); monetary transactions of different amounts with Vishal Sonji (accused No.30) and Sumit Shinde (accused No.15), who are the dealers/sellers of the large quantity of contraband seized in the present proceedings, between the period 1 November 2021 to 25 July 2023. Such investigation material cannot be at this stage summarily discarded as payment from sale of firecrackers by the Applicant, who is stated to be a Poojari by profession, serving in Tulzabhavani Mandir, Tulzapur. The CDRs would indicate several calls between the Applicant and the co-accused, particularly the seller of the seized contraband i.e. one Sumit Shinde (accused No.15). All this is documented in the charge-sheet which runs into about 10,000 pages.

9. There is substance in the stand of the prosecution that it is imminent to unearth the links between the Applicant and the other co-accused being sellers and the ones dealing with contraband i.e. Mephedrone, which is a heinous psychotropic substance. At this preliminary stage, it is difficult for this Court to accept Mr. Sapkal's contention that the Applicant is a mere consumer, who is charged under Section 27 of the NDPS Act also without considering the language and purport of Section 8(c) which is of vide import. The names and location of persons with whom the

Applicant has dealt with are to be ascertained including recovery of his mobile phone considering the call records and the evidence gathered. It would be pre-mature for the Court at this *prima facie* stage, to observe that no material could be collected by the investigating agency to connect the Applicant with the crime which does not appear to be the case in the given factual matrix. There are statements not merely of co-accused persons, but of independent witnesses who have specifically named the Applicant which again cannot be summarily rejected at this preliminary stage of the proceedings.

10. Now advertent to the submission of the Ld. Senior Counsel who emphasized that Section 27 of the NDPS Act under which the Applicant is charged prescribes for a maximum punishment of one year and would thus be bailable. In this context, reliance is placed on the judgment of ***Stefan Mueller*** (supra), more particularly paragraph 5 of the said decision. Pursuant thereto came the judgment of the Bombay High Court in ***Rhea Chakraborty Vs. Union of India & Anr.***⁶ where the Court duly noted the decision of ***Stefan Mueller*** (supra). The Bombay High Court in the said judgment, analyzing Section 27, in the backdrop of amendment to Section 37 in the year 1989 and then in the year 2021 went to hold that the situation is clarified by a decision of the Constitutional Bench of the Supreme Court in the case of ***State of Punjab Vs. Baldev Singh***⁷ where the Constitutional Bench proceeded to hold that Section 37 of the NDPS Act makes all offences under the Act to be cognizable and non-bailable and also lays down stringent conditions for the grant of bail, with caution that despite such stringent provisions under the Act as amended in 1988, the drugs business is booming; drugs addicts are rapidly rising; crime with its role in narcotics is galloping and drug trafficking network is ever growing. The decision of the Constitutional Bench in ***Baldev Singh*** (supra) will act as

6 (2020) SCC OnLine Bom 990

7 (1999) 6 SCC 172

the binding precedent at this stage.

11. Learned Senior Counsel Mr. Sapkal has cited several decisions in his compilation of judgments not dealing with each individually, to avoid repetition. There is no quarrel on the principles laid down in the judgments, more particularly of that of the Supreme Court. However, it may be noted that in the order of the Supreme Court in ***Sahil Firoz Shaikh Vs. State of Maharashtra***⁸ was a decision in bail case a woman from whom there is no allegation of recovery of contraband. At this juncture, it is apposite to refer to a decision of the Supreme Court in ***Union of India Vs. Rattan Mallik alias Habul***⁹ where it was categorically observed that merely because nothing was found in possession of the respondent, it could not be at the bail stage said that the respondent was not guilty of the offences charged, in the context of the expressions 'reasonable grounds' and 'satisfaction' as mentioned in Section 37 of the NDPS Act. The decisions of the Bombay High Court, other High Courts cited by Mr. Sapkal in support of his submissions. However, those orders/decisions being in the backdrop of entirely different facts and circumstances are of no assistance to the Applicant. The decision much emphasized by Mr. Sapkal in the case of ***Ragini Dwivedi*** (supra) wherein the Supreme Court held that Section 37 was wrongly invoked when the offences charged under Section 27 is noted. However, the factual matrix of that case where drugs were raided from a party in which the Applicant therein was present and found in consumption of the said drugs, the said order came to be passed. That was also case where the charge-sheet was not filed. In such facts and circumstances, the Supreme Court found it fit to enlarge the Appellant on bail which would not apply to the given situation.

12. I have also carefully perused the judgment compilation tendered by Mr. Lavte, learned APP for the State. It is pertinent to note a recent decision of the Bombay High Court in ***Mehrun Aslam Samlewale Vs.***

⁸ Order dated 29 November 2024 passed in Criminal Appeal No.4905 of 2025.

⁹ (2009) 2 SCC 624

*State of Maharashtra*¹⁰ where the decision of the Supreme Court in *Muraleedharan* (supra) has been reiterated and followed. Also, the Supreme Court recently has in the order passed in the case of *Anrul SK Vs. State of West Bengal*¹¹ observed that grant of anticipatory bail in cases involving NDPS Act is a very serious issue. The bail to one of the co-accused incarcerated for about 1 year and 2 months was allowed in that case, in completely different facts as noted in the said order. We may also gainfully refer to a recent order of the Supreme Court in *Dinesh Chander Vs. State of Haryana*¹² observed “we are not satisfied that any error has been committed by the High Court in refusing anticipatory bail to the Petitioner in -----”. The petitioner was granted liberty to surrender before Trial Court and apply for regular bail.

13. I have also perused the decision of the Bombay High Court in *Karishma Prakash* (Supra) where considering the conflicting decisions of the Court in *Stefan Mueller* (supra) and *Rhea Chakraborty* (supra) the matter has been referred to larger bench which is pending. This is in the context of the offences under Section 37 of the NDPS Act being cognizable and non-bailable. However, without entering into the nuances of such decision which is pending consideration before Larger Bench, in my humble view the decision of the Court in *Rhea Chakraborty* (supra) following the decision of the Constitutional Bench Supreme Court in *Baldev Singh* (supra) which was not considered in the case of *Stefan Mueller* (supra), cannot be glossed over.

14. In the backdrop of all of the above, in my *prima facie* view considering the complexity of the transaction and the overall conspectus of the matter, there are reasonable grounds to refuse anticipatory bail in such case under the NDPS Act. Having observed so, considering the factual complexion of the given case, the rigours under Section 37 of the NDPS Act

10 Order dated 15 April 2024 passed in Anticipatory Bail Application No.999 of 2024.

11 Order dated 19 September 2024 passed in Special Leave to Appeal (Crl.) No.12621 of 2024.

12 Order dated 7 July 2025 passed in Special Leave to Appeal (Crl.) No.9540 of 2025.

which are *prima facie* applicable, cannot be discarded at such preliminary stage.

15. For the reasons noted and discussed above, I am of the considered view that the Anticipatory Bail Application deserves to be dismissed by passing the following order:-

ORDER

i. Anticipatory Bail Application No.1008 of 2025 is Rejected.

16. Needless to observe that the observations above are *prima facie* for the purposes of adjudication of this Anticipatory Bail Application. It is also open to the Applicant in the given facts, to surrender before the Trial Court and apply for regular bail, which in that event shall be considered on its own merits and in accordance with law.

[ADVAIT M. SETHNA, J.]