

Amberkar

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

BAIL APPLICATION NO. 509 OF 2024

Yusuf Hasim Shaikh

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Tabish Mooman for Applicant
- Mr. Sukanta A. Karmakar, APP for Respondent – State
- Mr. Abhijit Ahirrao, PI and Mr. R.V. Londhe, API, ANC Ghatkopar

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CORAM : MILIND N. JADHAV, J.**DATE : MARCH 27, 2025****P. C.:**

1. Heard Mr. Mooman, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.

2. Applicant – accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. 33/2023 registered with ANC Ghatkopar Unit for the offences punishable under Sections 8(c) r/w 22(c) and Section 29 Narcotics and Psychotropic Substances Act, 1985 (for short "**NDPS Act**").

3. Admittedly there is no conscious recovery or possession of the alleged contraband from the Applicant – accused No. 2 in the present crime. Accused No. 1 was arrested with the alleged contraband namely 110 grams of Mephedrone i.e MD. His statement

was recorded by the prosecution wherein he disclosed the name of the Applicant as supplier. Applicant was arrested four months thereafter.

4. *Prima facie* case of the prosecution is based on two grounds emanating from the record of the case. Firstly statement of co-accused i.e. accused No. 1 disclosing that supplier of the alleged contraband was accused No. 2 i.e. Applicant before me and secondly on the basis of the CDR records which learned APP has attempted to place before me to submit that tower location of the mobile phones of the accused persons *prima facie* show that during the time when accused No. 1 was arrested, there has been effective conversation between accused No. 1 and accused No. 2 on four different occasions ranging from 1 minute to 31 minutes. That apart learned APP has persuaded me to consider two witness statement. Statement at page No. 51 is recorded by the brother in law of Applicant which states that Applicant was himself addicted to use of the alleged contraband for quite sometime and after that he started supplying the said contraband. Second statement appended at page No. 52 is that of a well known friend of accused and he has stated that Applicant had persuaded him to give his documents for KYC in order to obtain a sim card which he purchased and the same sim card was used by him to speak to accused No. 1. Learned APP has stated that the phone calls

made to accused No. 1 were from the same sim card which was procured in the name of his friend.

5. In the case of *Vikramjit Singh Vs. Narcotics Control Bureau*¹ the Delhi High Court found no admissible evidence linking Applicant directly to the contraband. It noted that disclosure statement of the person from whose house the drugs were recovered did not implicate the Applicant and was thus inadmissible under law as such a confession is hit by Section 25 of Indian Evidence Act, 1872.

6. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*² held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

1 BA No. 4268 of 2024 decided on 14.01.2025

2 (2021) 4 SCC 1

7. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*³ the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

8. In the present case, *prima facie*, no recovery is made from Applicant. His indictment is solely on the basis of statements recorded under Section 67 of the NDPS Act and CDR reports. I am of the opinion that at this stage the prosecution has not sufficiently established the live link of the Applicant with the offence in order to attract the stringent rigors of Section 37 of the NDPS Act. Reliability of any incriminating material against Applicant may be appropriately proved at the stage of trial. At this *prima facie* stage, I am inclined to consider his Application considering the facts of the case delineated hereinabove and also the fact that he has been in custody awaiting trial for a period of more than 1 year and 8 months.

3 2023 SCC OnLine 135

9. In view of the aforesaid *prima facie* observations, the Applicant can be released on bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and

1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application is allowed and disposed.

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[MILIND N. JADHAV, J.]

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