

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

BAIL APPLICATION NO. 1743 OF 2024

Mohammed Ismail Salim Siddhiqui ...Applicant
Versus

State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 5146 OF 2024

Shamshuddin Niazuddin Shah ...Applicant
Versus

State of Maharashtra ...Respondent

Mr. Ayaz Khan, a/s Dilip Mishra, Zehra Charania and Malika
Sharma, i/b Sugat Ingale, in both BAs.

Mr. A. S. Shalgaonkar, APP for the State.

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

CORAM: N. J. JAMADAR, J.

DATED: 30th JANUARY, 2025

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, 465, 468 and 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, 1985"), have preferred these applications to enlarge them on bail.

2. The gravamen of indictment against the applicants and

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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) and Ali Javed Jafar Mirza (A12) were indulging in trafficking in drugs in huge quantity through their associates Shamsuddin Shah (A3), the applicant in BA/5146/2024, Imran Pathan (A4), Mohd. Tausif Shaukat Ali Mansuri (A5), Mohd. Ismail Salim Siddhique (A6), the applicant in BA/1743/2024 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), Sahil Ramzan Ali Khan (A1), Mohd. Tausif Shaukat Ali Mansuri (A5), Mohd. Ismail Salim Siddiqui (A6), the applicant in BA/1743/2024, and Imran Pathan (A4) alighted from the said car. They were accosted.

(iii) In the presence of the panch witnesses, from the

possession of Sahil Khan (A1), 62 gms. of mephedrone; Mohd. Ajmal Kasam Shaikh (A2), 54 gms. of mephedrone; Shamsuddin Shah (A3), the applicant in BA/5146/2024, 31 gms. of *charas*; Mohd. Tausif Shaukat Ali Mansuri (A5) 14 gms. of mephedrone; Mohd. Ismail Siddiqui (A6), the applicant in BA/1743/2024, 18 gms. mephedrone and Imran Pathan (A4), 20 gms. of mephedrone were recovered.

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

3. Mr. Khan, the learned Counsel for the applicants, submitted that post analysis of the contraband substance allegedly recovered from the possession of the applicants and co-accused, the indictment against the applicants of having been found in possession of commercial quantity of any contraband substance, does not stand. With reference to the CA reports, Mr. Khan submitted that the sample of the contraband allegedly recovered from the possession of Shamsuddin Shah (A3) turned out to be *charas*; of which 31

gms. is a small quantity, and the sample of the contraband recovered from the applicant Mohd. Ismail (A6) tested positive for 'Ketamine'. Commercial quantity of Ketamine is 500 gms. Mohd. Ismail (A6) can thus be said to have been found in possession of an intermediate quantity of Ketamine. Mr. Khan further submitted that even if the contraband substance recovered from all the accused is considered together, the aggregate quantity would be less than commercial quantity.

4. Mr. Khan urged that taken into account this aspect of the matter, by an order dated 20th December, 2024 this Court has released Mohd. Ajmal Shaikh (A2) and Sarfaraz Khan (A7) on bail. The applicants are entitled to the same dispensation.

5. As a second limb of the submission, Mr. Khan would urge that the reliance by the prosecution on the alleged financial transactions between the applicant and co-accused Kaynaat Khan (A10), the wife of Sahil Khan (A1), the alleged kingpin, is of no avail to the prosecution as the applicants and the co-accused have not been charged with an offence punishable under Section 27A of the NDPS Act, 1985. Resultantly, the interdict contained in Section 37(1)(b) of the NDPS Act, 1985 does not come into play.

6. Even otherwise, according to Mr. Khan, the applicant Shamshoddin Shah (A3) had closed the account way back on 12th April, 2022, much before the seizure in question. As regards Mohd. Ismail (A6) there is a bald assertion that in the joint account maintained by Mohd. Ismail (A6) and Kaynaat Khan (A10), the co-accused had transactions of a substantial amount. In the absence of the charge under Section 27A of the NDPS Act, 1985, the aforesaid circumstance does not advance the cause of the prosecution urged Mr. Khan.

7. In contrast to this, Mr. Shalgaonkar, the learned APP, stoutly resisted the prayer for bail. It was submitted that the applicants have been named as the associates by Kaynaat Khan (A10) in the discovery made by her. Moreover, there is material to show that there were financial transactions between the applicant and Kaynaat Khan (A10). Since this Court has rejected bail application of Kaynaat Khan (A10), the applicants do not deserve to be enlarged on bail, though no commercial quantity of contraband substance was found in the possession of the applicants.

8. *Prima facie*, by and large, it appears incontrovertible that the applicant Shamshoddin Shah (A3) was found in possession of 31 gms. of *charas*, a small quantity; and Mohd. Ismail (A6)

was found in possession of 18 gms. of Ketamine; an intermediate quantity. It also appears that the aggregate quantity of Ketamine or *charas* found in possession of the accused did not exceed the commercial quantity.

9. It is in this backdrop, by an order dated 20th December, 2024, this Court was persuaded to release Mohd. Ajmal Shaikh (A2) and Sarfraz Khan (A7) on bail observing *inter alia* as under:

“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."

10. The aforesaid reasons which weighed with this Court, especially the consequence of the substance having been found in possession of the applicants and co-accused being Ketamine, apply with equal force to the claim of the applicants in these applications. Shamshoddin Shah (A3) was found in possession of 31 grms. of *charas*, a small quantity, and Mohd. Ismail (A6) in possession of 18 grams of Ketamine, an intermediate quantity. *Prima facie*, from the quantity of contraband substance found in possession of the applicants and co-accused, collectively, the interdict contained in clause (b) sub-section (1) of Section 37 does not apply as the applicants cannot be said to have been arraigned for the offences involving commercial quantity of contraband.

11. *Prima facie* there also appears substance in the submission of Mr. Khan that the applicants have not been charged for the offence punishable under Section 27A of the NDPS Act, 1985, nor the learned Special Judge has taken cognizance of the said offence. Therefore, in the absence of the indictment under Section 27A of the NDPS Act, 1985, the interdict contained in the provisions contained in Section 37A(1) (b) may not operate as commercial quantity is not involved.

12. On the aspect of financial transactions, indeed there is material on record to show that there were transactions between Shamshoddin Shah (A3) and Kaynaat Khan (A10). At the same time, it must be noted that from the own showing of the prosecution, the said account maintained by the applicant Shamshoddin Shah (A3) was closed on 12th April, 2022, a year and half before the seizure in question.

13. The applicant Mohd. Ismail (A6) is shown to be a joint account holder with Kaynaat Khan (A10). In the absence of indictment under Section 27A of the NDPS Act, 1985, to what extent the said circumstance can be pressed into service against the applicant appears to be a matter for adjudication.

14. In the aforesaid view of the matter and especially having regard to the quantity of the contraband substance allegedly found in possession of the applicants, I am persuaded to exercise the discretion in favour of the applicants.

15. Hence, the following order.

: O R D E R :

- (i) Applications stand allowed.
- (ii) Mohammed Ismail Salim Siddhiqui, the applicant in BA/1743/2024 and Shamshuddin Niazuddin Shah, the

applicant in BA/5146/2024 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 the 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.]