

Amberkar

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

CRIMINAL BAIL APPLICATION NO.1753 OF 2024

Deepak Ashok Pawar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION NO.3850 OF 2024

Imran Ajij Khan @ Imran J.J.

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Ayaz Khan a/w Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant in Bail Application No. 1753 of 2024.
- Ms. Ashwini Achari a/w Mr. Taraq Sayed, Mr. Amish Parera i/b Ms. Bhumika Gada, Advocates for Applicant in Bail Application No. 3850 of 2024.
- Mr. Balraj B. Kulkarni, APP for State.
- Mr. Sadanand Yerekar, PI DCB CID Unit III – Present.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2025

P. C.:

1. These two Applications are tagged together since they arise out of the same crime.
2. Applicants by way of this Application are seeking regular bail in connection with N.D.P.S. Special Case No.2317 of 2023 registered with the DCB, CID Unit III vide C.R. No. 55 of 2023 registered with DCB,

CID Unit 3 for offences under Sections 8(c), 22(b), 22(c) and 29 of the NDPS Act.¹.

3. Applicant in Bail Application No.3850 of 2024 – Imran Ajij Khan @ Imran J.J. is arraigned as Accused No.1 in the F.I.R, he was arrested on 02.07.2023. Applicant in Bail Application No.1753 of 2024 – Deepak Ashok Pawar is arraigned as Accused No.3 in the F.I.R, he was arrested on 06.07.2023. There are a total of four accused in the FIR.

4. The case of prosecution against the Applicants before me is that Accused No.1 (Applicant in 3850 of 2024) was intercepted by Police Officials during patrolling which led to recovery of 27 grams of Mephedrone² from him. An inquiry of Accused No.1 under Section 67 of the NDPS Act led to disclosure of Accused no.2's role wherein he named him as the person from who he regularly procures the contraband. Inquiry of Accused No.2 led to disclosure of Accused No.3 - Applicant in 1753 of 2024. As per the prosecution, recovery of 52 grams has been made from Accused No.2 while admittedly no recovery is made from Accused No.3.

5. Insofar as Accused No.4 is concerned, he has been granted Bail by the Trial Court. Accused No.1 and Accused No.3 are before me today. The prosecution heavily relies upon the recorded statements of

1 "The Narcotics Drug and Psychotropic Substances Act, 1985."

2 A Narcotic Drug and Psychotropic Substance listed at Sr. No.238-F of the Table as per clause (viii) of Section 2 of the NDPS Act having 'small quantity' as 2 gm and 'commercial quantity' as 50 gm.

co-accused to indict Accused No.3 whereas indictment of Accused No.1 is based on the basis of the alleged recovery.

6. Mr. Khan, learned Advocate appearing on behalf of the Applicant in Bail Application No. 1753 of 2024 – Accused No.3 has opened his submissions by raising the ground of parity. He would submit that the Accused No.4, who was arrested subsequently based on his WhatsApp chats with the Accused No.3 has been released on bail by the Trial Court. He would submit that, as per the case of the prosecution, the role of Accused No.4 is none different than that of Accused No.3 as both are allegedly purported to be suppliers of the contraband as per prosecution case and are indicted based on statements of co-accused which, in a vacuum, is inadmissible in law as there is no conscious possession from them. He would urge the Court that in the facts of the case, the benefit of parity to be extended to the present Applicant – Accused No.3 as well. That apart, he would on the facet of non-compliance of procedural mandates of the NDPS Act would submit that there is total non-compliance of provisions of Section 52A of the NDPS Act read with Section 8 and 18(1) and (2) of the 2022 Rules³ as the Certification by Magistrate is not in consonance with Form 5 as directed by the 2022 Rules. He would submit that arrest of the Applicant is also illegal as he was not furnished with the

3 Narcotic Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022.

grounds of his arrest as mandated under Section 50 of the CrPC. Lastly he would submit across the bar that the witness statements recorded in the chargesheet are unreliable since most of them are themselves offenders under the NDPS Act. He would submit that each of these grounds would in themselves suffice to secure the liberty of an undertrial Accused and would thus pray to this Court to consider the Application for bail.

7. Learned Advocate, Ms. Achari appearing for Applicant in Bail Application No. 3850 of 2024 would adopt the submissions made by Mr. Khan in so far as non-compliance of the 2022 Rules are concerned. She would add that there is substantial delay of 55 days in conducting the 52A proceedings. She would submit that the appraisal letter under Section 50 of the NDPS Act bears an outward number which raises a doubt as to whether the Applicant was indeed apprised of his rights under Section 50 of the NDPS Act at the time of his frisking or not. She would submit that in such a case recovery of contraband becomes doubtful and would therefore pray for the Application to be allowed especially in the light of the fact that as per the best case of prosecution recovery from the Applicant will be only of intermediate quantity and the rigors of Section 37 would not apply.

8. Mr. Kulkarni, Learned APP appears on behalf of State in both Bail Applications. He would submit that although the rigours of

Section 37 are not attracted against Accused No.1 his disclosure has led to the indictment of individuals who have been found to be in possession of commercial quantity of contraband. He would ardently persuade me to reject the bail of Applicants as it is the apprehension of prosecution that Applicants are members of a drug syndicate who incidentally were not in possession of commercial quantity of contraband at the time of their arrest but their disclosure statements coupled with conversations of Accused No.3 with Accused No.4 on WhatsApp aptly indicate their involvement in something more than what meets the eye especially when Accused No.2 has been found in possession of commercial quantity. He would vehemently submit that the statements of witnesses annexed at page No.104 to 132 indicate the involvement of Applicants in drug trafficking. He would submit that delay in compliance of 52A proceedings cannot be in itself a ground for Bail as argued. He would thus pray to the Court to reject the Applications.

9. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

10. Accused No.1 has been allegedly held with intermediate quantity of contraband. Accused No. 3 has been indicted on the basis of statement of co-accused but no recovery of contraband has been made from his conscious possession apart from two mobile phones

which the prosecution claims to contain incriminating chats, the same which are annexed to the chargesheet. Be that as it may, this Court at a *prima facie* stage need not consider the nature of chats as there is *prima facie* nothing incriminating in them nor any other material corroborating the prosecution's case.

11. The Supreme Court in the case of ***Toofan Singh Vs. State of Tamil Nadu***⁴ Court 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.

11.1. In the case of ***Phundreimayum Yas Khan Vs. State (NCT of Delhi)***⁵ 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

4 (2021) 4 SCC 1

5 2023 SCC OnLine 135

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.”

11.2. In the case of ***Jasbir Singh Vs. Narcotics Control Bureau***⁶ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

64. ***

65. ***

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon"ble Court in State v. Navjot Sandhu @ Afsan Guru Crl. A. No. 80/2003 wherein this Hon"ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon"ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

6 (2023) SCC OnLine Del 134

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.
 2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.
 3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.
 4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.
 5. Only such portion of the information as is distinctly connected with the said discovery is admissible.
 6. The discovery of the fact must relate to the commission of some offence.”
68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a “new fact” thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence.”

11.3. In the case of *State Vs. Pallulabid Ahmad Arimutta*⁷, the Supreme Court held that CDR details of the some of the accused is an aspect that can be examined at the stage of trial. Hence statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

11.4. In the case of *Bharat Chaudhary Vs. Union of India*⁸, the Supreme Court held that printouts of WhatsApp messages downloaded from the mobile phone or device seized cannot be treated as sufficient

7 SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

8 (2021) 20 SCC 50

material to establish link between the accused persons under the NDPS Act at the stage of bail. It also held that statement of co-accused cannot be relied upon under Section 67 of NDPS Act.

12. In light of the above decisions, the WhatsApp chats are rendered of limited purpose. Accused No. 3 has not been found in possession of any contraband. I am of the opinion that the material on record against Accused No.3 is not *prima facie* incriminating enough at the stage of bail to warrant his further custody. His complicity may be proved at the stage of trial.

13. In so far as Accused No. 1 is concerned, the quantity recovered from him is admittedly intermediate quantity and hence rigours of Section 37 would not apply. On the basis of *prima facie* material placed on record, I find no reason why custody of Accused No.1 would be further warranted. His conduct can be regulated by imposing appropriate conditions and his complicity can be proved on trial.

14. In view of the *prima facie* observations and facts delineated herein above both Applicants before me are entitled for bail. Bail Applications are allowed on the following terms and conditions:-

- (i) Applicants are directed to be released on bail in N.D.P.S. Special Case No.2317 of 2023 registered with the DCB, CID Unit III vide C.R. No. 55 of 2023 registered with

DCB, CID Unit 3, on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or two sureties in the like amount;

- (ii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iii) Applicants shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (iv) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Before their actual release from jail, Applicant shall

furnish their respective address where they propose to reside after their release from jail, to the concerned Police Station and also to the trial Court;

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of Bail.

15. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence uninfluenced by the present order and strictly in accordance with law.

16. Bail Applications are allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
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RAVINDRA
MOHAN
AMBERKAR
Date: 2025.03.24
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