

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2203 OF 2024

Altamash Yusuf Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2204 OF 2024**

Atik Hamid Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Kamlesh Satre, Advocate for Applicant in BA No.2203/2024.
 - Mr. Atul Sarpande, Advocate for Applicant in BA No.2204/2024.
 - Mr. Hitendra J. Dedhia, APP for Respondent – State in both Applications.

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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 17, 2025.

P.C.:

1. Heard Mr. Satre, learned Advocate for Applicant in BA No.2203/2024; Mr. Sarpande, learned Advocate for Applicant in BA No.2204/2024 and Mr. Dedhia, learned APP for Respondent – State.

2. The two Applications are filed by Applicants – Altamash Yusuf Shaikh (Accused No.3) and Atik Hamid Shaikh (Accused No.1) under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.03 of 2023 registered with

ANC Bandra, Mumbai for offences under Sections 8(c) readwith 22(c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 and Section 142 of the Maharashtra Police Act, 1951. Since both Applications arise from the same crime, they are disposed by this common order. Both Applicants have been arrested on 12.01.2023 and are incarcerated since 2 years 2 months and 6 days.

3. Briefly stated prosecution case is that on 11.01.2023 at 19:40 hours Police Head Constable Mr. Talpe received a reliable information that two persons viz; Accused Nos.1 and 2 sell Mephedrone (for short “**MD**”) in Mahim – Dharavi area and that they would come to the said area at around 23:45 hours to 24:00 hours. Thereafter Mr. Talpe noted the said information in the Station Diary and passed the information to Police Inspector Mr. Sanjay Chavan and accordingly Mr. Sanjay Chavan passed the information to the Assistant Commissioner of Police and also arranged raiding team. As per the reliable information, the raiding team laid a trap and intercepted Accused Nos.1 and 2 on 12.01.2023. Accused No.1 was intercepted with 100 grams of alleged contraband MD and Accused No.2 was intercepted with 20 grams of alleged contraband MD. During enquiry, both Accused disclosed name of Accused No.3 as supplier of alleged contraband MD. Accordingly API Gaikwad who was a part of the raiding team received information from his reliable source about location of Accused No.3 and thereafter on 12.01.2023 Accused No.3

was intercepted.

4. Mr. Sarpande, learned Advocate appearing for Applicant in BA No.2204/2024 who is arraigned as Accused No.1 in the crime would at the outset draw my attention to previous order dated 26.02.2025 and more specifically paragraph No.7 of the said order wherein his submission regarding non-compliance of Section 50 of the NDPS Act in so far as the Applicant whom he represents is concerned. He has drawn my attention to page No.45 of the Application which is the intimation letter under Section 50 of the NDPS Act. He would submit that the case of Applicant is squarely covered by a decision of this Court in the case of *Sharib Iqbal Ansari Vs. State of Maharashtra*¹.

5. Perusal of the intimation letter at page No.45 reveals that it only bears the signature of Accused No.3 and does not contain any endorsement of the Applicant regarding how he wants to exercise his statutory right under Section 50 of the NDPS Act.

6. He would submit that in the present case there is also transgression of provisions of Section 42(1) of the NDPS Act as the secret information was received by Head Constable Talpe who ought to have in writing submitted the said information to his superior however he gave the information to PI Chavan who forwarded the same in writing to the Assistant Commissioner of Police and arranged the

¹ Bail Application No.363 of 2025 decided on 18.02.2025.

raiding party. He would submit that the provisions of Sections 42 and 50 not being followed scrupulously in the present case, it would vitiate the seizure effected by the prosecution.

7. Mr. Satre, learned Advocate appearing for Applicant in BA No.2203/2024 who is arraigned as Accused No.3 in the crime would submit that the Applicant has been falsely indicted in the present case on the basis of alleged disclosure of his name by Accused Nos.1 and 2 as the supplier of alleged contraband. He would submit that the said disclosure statement of Accused No.1 has not been reduced in writing by the investigating agency and the same is not even a part of the charge-sheet and hence the arrest and detention of Applicant – Accused No.3 is in transgression of the provisions of Section 42 of the NDPS Act. He would submit even otherwise the statement of co-accused is inadmissible in evidence as per Section 67 of the NDPS Act.

8. Both Mr. Sarpande and Mr. Satre would submit that considering their aforesaid submissions and also the fact the Applicants are incarcerated since 2 years 2 months and 6 days without trial being commenced as also charges not being framed, they may be enlarged on bail.

9. Mr. Dedhia, learned APP appears for the Respondent – State in both matters. He has vehemently opposed the Bail Applications and drawn my attention to the Affidavits dated 12.03.2025 filed by Mr.

Dada Gaikwad, API to resist both Bail Applications. Insofar as Accused No.1 is concerned, he would submit that he has 5 criminal antecedents to his discredit out of which 1 is NDPS offence, hence he would submit that he is an habitual offender. He would next submit that even though Accused No.1 was externed from the jurisdiction of Mahim Police Station by externment order dated 01.07.2022, he entered the said jurisdiction and committed a serious offence under NDPS Act. He would submit that compliance of provisions of Section 50 of the NDPS Act is done properly by API Mr. Chavan as the same bears signature of the accused as well as of the two panchas and further Section 50 only mandates to make the accused aware about his right to be searched before a gazetted officer or a Magistrate, if so required by him and not to give information in some prescribed form or in writing. In this regard, he has referred to and relied upon the decision of the Supreme Court in the case of *State of Punjab Vs. Baldev Singh*². He would submit that reliance placed by Accused No.1 on the decision of this Court in the case of *Sharib Iqbal Ansari* (*supra*) is not applicable in the facts of the present case.

9.1. Next he would submit that the Chemical Analysis Report dated 21.06.2023 confirms that the seized contraband is MD. He would submit that both accused have been intercepted with commercial quantity of contraband MD and hence rigours of Section

2 AIR 1999 SC 2378

37 would be applicable in the present case. He would submit that there is sufficient evidence on record to prove the complicity of the Applicants in the crime including CDR of Applicants which establishes the link between them.

9.2. He has referred to and relied upon the decision of the Supreme Court in the case of *Narcotics Control Bureau Vs. Kashif*³ to submit that assuming without admitting there is an error in making compliance as per the provisions of the NDPS Act, even in such cases the non-compliance of procedural provisions do not by itself entitle the accused to bail or vitiate the trial. He would submit that procedural violations must be assessed in context to the specific case and should not automatically result in bail or acquittal. To support his submission he has placed reliance on the decision of the Supreme Court in the case of *Union of India Vs. Bal Mukund & Ors.*⁴.

10. With the able assistance of the learned Advocates I have perused the record of the case.

11. In the present case it is seen that on 11.01.2023 at 19:40 hours Police Havaldar Mr. Talpe received information from his reliable source regarding Accused Nos.1 and 2 selling the alleged contraband MD in Mahim - Dharavi area. However from the material on record it is seen that though Mr. Talpe has taken down the said information in

3 2024 INSC 1045

4 2009 CriLJ 2407

writing in his Station Diary, he has verbally informed the same to his superior Police Inspector Mr. Chavan who sent the said information to his superior i.e. Assistant Commissioner of Police instead of Mr. Talpe and pursuant to the same Mr. Chavan arranged the raiding team. This fact is admitted by the prosecution in its Affidavits filed for opposing the Bail Applications. Hence non-compliance of the provisions of Section 42(2) of the NDPS Act is *prima facie* evinced from the material on record.

12. That apart when inventory panchnama and certificate issued by Magistrate is concerned, with respect to alleged contraband which has been confiscated is seen, the provisions of NDPS Act namely Section 52A (2) and (3) read with Rules 8 and 18 (1) and (2) of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 has been given a complete go-by.

13. Despite Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 being in place , the prosecution has not followed the said Rules. The certificate issued by the Magistrate is in the form which the Magistrate has desired to issue at the say of the Investigating Officer which is impermissible in law.

14. This Court in case of *Chandrabhan Janardhan Yadav Vs. State of Maharashtra*⁵ has considered the applicability of the provisions of NDPS Act and the Rules and more specifically the reasons as to why the said provisions are required to be followed by the prosecution. The non-compliance of the aforesaid statutory provisions are required to be considered by the Court at the time of Bail Application.

15. In so far as case of Accused No.1 is concerned, as delineated hereinabove non-compliance of provisions of Section 50 of the NDPS Act is *prima facie* observed. The decision of this Court in the case of *Sharib Iqbal Ansari (supra)* is therefore squarely applicable to the facts of the present case as the facts in that case are identical in so far as the arrest of Applicant therein and compliance of provisions of Section 50 is concerned. In the said decision, this Court has considered the decision of the Delhi High Court in the case of *State Vs. Denis Jauregul Mendizabal*⁶ wherein the Delhi High Court while dealing with the issue of non-compliance of the mandatory procedural safeguards of Section 50 of the NDPS Act has observed that the compliance of such requirements should be complete and not left in doubt. A mandatory requirement by definition, has to be complied with in *toto*, in its full letter and spirit, and not as a halfway measure or in a patchy, perfunctory manner or deficient manner. If page No.45 of the Bail Application filed by Accused No.1 is perused, the non-compliance of

⁵ Bail Application No.2254 of 2024 and connected matters decided on 04.03.2025.

⁶ CRL.L.P. NO. 241 of 2020 decided on 22.12.2022

Section 50 is *prima facie* evident.

16. Next, in so far as case of Accused No.3 is concerned, it is seen that his indictment is solely on the basis of statements of Accused Nos.1 and 2 during enquiry which have not even been placed on record before this Court. Be that as it may, it is settled law that statements of co-accused are inadmissible in evidence as per law.

17. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*⁷ Court 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 Indian 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 of India.

18. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*⁸ the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any

⁷ (2021) 4 SCC 1

⁸ 2023 SCC OnLine 135

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.”

19. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*⁹ 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.

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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

9 (2023) SCC OnLine Del 134

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:—

- 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."

20. In the case of *State Vs. Pallulabid Ahmad Arimutta*¹⁰, the Supreme Court held that CDR details of some of the accused or allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Hence it is clear that statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

¹⁰ SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

21. It is also seen that the Applicants are incarcerated since 2 years 2 months and 6 days without trial being commenced. Till date even charges have not been framed against the Applicants. It is settled law that an under-trial accused cannot be incarcerated for a long period without trial as the same is in teeth with his fundamental right to speedy trial and justice as guaranteed under Article 21 of the Constitution of India. As the present case involves contraband in commercial quantity, I deem it appropriate to refer to the decisions of the Delhi High Court in the case of *Vishwajeet Singh Vs. State (NCT of Delhi)*¹¹ wherein the Delhi High Court has observed that Section 37 of the NDPS Act provides for stringent conditions to be satisfied by the accused for his enlargement on bail, the same does not fetter grant of bail to the accused on the ground of undue delay in the completion of trial.

22. Though Mr. Dedhia, learned APP has vociferously resisted the Bail Applications and placed reliance on the decisions of the Supreme Court in the case of *Baldev Singh (supra)*, *Kashif (supra)* and *Bal Mukund (supra)* cannot be countenanced at this stage in such strong facts of the present case. Liberty of Applicants cannot be curtailed when the prosecution has failed to exercise its duty as per the well established procedure laid down under the NDPS Act. The complicity of the Applicants in the alleged crime can be undoubtedly

¹¹ 2024 DHC 1554

proved by the prosecution at the trial.

23. In view of my above *prima facie* observations, Applicants before me have made out a case for grant of bail. Hence the following order:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, Applicants shall mark presence on the next working day;
- (v) 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;

(vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) 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.

24. 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.

25. Bail Application No.2203 of 2024 and Bail Application No.2204 of 2024 are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay