

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2241 OF 2024**

Salim Mubarak Shaikh ...Applicant
Versus
The State of Maharashtra ...Respondent

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Mr. Dilip Mishra a/w Mr. Ayaz Khan, Ms. Zehra Charania and
Ms. Mallika Sharma, Advocate for the Applicant.

Mrs. P. S. Rane, A.P.P. for the Respondent – State.

Mr. Ghorpade Dnyaneshwar (ASI), Bundgarden Police Station, Pune
city, present.

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CORAM : N. R. BORKAR, J.
DATE : 03rd February, 2025.

P.C.:

1. This is an application for regular bail.
2. The applicant came to be arrested in Crime No.315 of 2021 registered at Bundgarden Police Station for the offences punishable under Sections 8(c) read with 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).
3. On 21.12.2021, the present applicant and the co-accused were apprehended and they were found in possession of 114 gms. and 450 mlg. of Mephedrone (M.D.).

4. I have heard the learned counsel for the applicant and learned A.P.P for the Respondent-State.

5. The learned counsel for the applicant submits that the applicant has nothing to do with the alleged crime. It is submitted that the applicant is in jail for more than three years and the trial is still at the stage of framing of charge. It is submitted that there are no other criminal antecedents against the applicant.

6. On the other hand, the learned A.P.P for the Respondent-State submits that in the present case commercial quantity of contraband was found in possession of the applicant. It is submitted that in such situation unless the conditions mentioned in Section 37 of the NDPS Act are fulfilled, bail cannot be granted.

7. The Hon'ble Supreme Court in ***Rabi Prakash Vs. State of Odisha***¹ (Petition for Special Leave to Appeal Criminal No.4169 of 2023) order dated 13.07.2023 has held:

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The

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prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1) (b) (ii) of the NDPS Act.”

8. In the present case also the applicant is in jail for more than three years. There are no other criminal antecedents. Considering the overall facts and circumstances, I am inclined to release the applicant on bail.

ORDER

- (i) Criminal Bail Application is allowed;
- (ii) The applicant is directed to be released on bail in connection with Crime No.315 of 2021 registered at Bundgarden Police Station for the offences punishable under Sections 8(c) read with 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iii) The applicant shall attend the concerned Police Station twice in a month i.e., on first and third Saturday between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- (iv) The applicant shall not commit any other crime.
- (v) Application stands disposed of accordingly.

(N. R. BORKAR, J.)