

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

**BAIL APPLICATION NO. 2719 OF 2024**

Abuzar Shakeel Khan

...Applicant

**Versus**

The State of Maharashtra

...Respondent

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- Mr. Aniket Nikam, i/b Mr. Amit Icham, for Applicant.
- Mr. P.P. Deokar, APP for Respondent.
- Mr. Garud, PI and Mr. Nitin Palande, PSI, Trombay Police Station

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**CORAM : MANISH PITALE, J.**

**DATE : 06<sup>th</sup> FEBRUARY, 2025**

**P. C. :**

1. Heard learned counsel for the applicant and the learned APP for the respondent – State.

2. The applicant was arrested on 26<sup>th</sup> October, 2023, in connection with First Information Report No.0501 of 2023, dated 26<sup>th</sup> October, 2023, registered at Police Station Trombay, Mumbai, for offences under Sections 8(c), 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act.)

3. The FIR in the present case was registered when the applicant and a co-accused person were found in possession of contraband Mephedrone (MD) of commercial quantity as a matter of chance recovery. The applicant was arrested on the very same day i.e. 26<sup>th</sup> October, 2023 and he has remained

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behind bars since then. This is the first bail application moved before this Court. Although by an order dated 23<sup>rd</sup> August, 2024, passed in Bail Application No.2831 of 2024 (Sajid Abdul Rashid Shaikh Vs. The State of Maharashtra), a co-accused person was granted bail by this Court, the learned counsel for the applicant fairly submitted that he is not invoking the principle of parity.

4. While seeking bail in the present case, four main contentions are raised on behalf of the applicant. Firstly, that the contraband MD in the present case was weighed alongwith plastic pouch and it came to 60 grams, while the commercial quantity is 50 grams or more. It is submitted that this Court may consider the weight of the plastic pouch and in that light, a clear possibility of the contraband being less than the commercial quantity. Secondly, it is submitted that when the inventory was prepared under Section 52A of the NDPS Act, before the Metropolitan Magistrate, while the plastic pouch within a paper bag concerning contraband recovered from co-accused person showed that the paper packet was about 20 grams, the contraband being weighed in respect of the allegation levelled against the applicant shows that the paper bag weighed only about 8 grams. This is also a discrepancy that ought to be taken into consideration. Thirdly, it was submitted that while the *panchnama* recorded on 26<sup>th</sup> October, 2023, mentions that the original *panchnama* was signed twice by the witnesses, as well as accused persons and

the concerned Officer, the *panchnama* placed on record with the charge-sheet shows signatures of the said persons affixed only once. This is also highlighted as a discrepancy that ought to be taken into consideration by this Court. Fourthly, the learned counsel for the applicant referred to certain scientific papers to submit that the contraband Mephedrone is stated to be white, sometimes off white or slightly yellowish, but there is no reference to the said contraband being found in brown colour. It is submitted that the material allegedly recovered from the applicant was stated to be brown in colour and therefore, this is also a discrepancy that ought to be taken into consideration.

5. It is further submitted that the applicant has suffered incarceration since October, 2023 and charge is yet to be framed.

6. The learned APP, on the other hand, submitted that all the four grounds raised on behalf of the applicant would be a matter for trial and at this stage, it would not be safe for the Court to reach any conclusion in that regard. The learned APP further referred to chemical examination report dated 23<sup>rd</sup> February, 2024, which records that both the exhibits i.e. the contraband recovered from the applicant as well as co-accused person was found to be contained MD.

7. This Court has considered the rival submissions. As regards the first ground raised on behalf of the applicant, the contention pertaining to the

weight of the plastic pouch to be taken into account, which would indicate that the contraband could be said to be less than 50 grams, in the opinion of this Court the same would be a matter for trial. In the present case, it is recorded that 60 grams of contraband was recovered from the applicant. As to whether deducting the weight of the plastic pouch would bring the weight of the contraband below commercial quantity would require evidence and hence, at this stage, it cannot be considered as a discrepancy that would inure to the benefit of the applicant.

8. As regards the second ground, this Court is of the opinion that as to what was the weight of the paper bag in which the plastic pouch containing the contraband that was recovered from the applicant, is also a matter that would need evidence. Merely because the paper bag concerning the co-accused person apparently appears to be of a higher weight cannot at this stage itself lead to a conclusion that the prosecution case is vitiated. It would obviously be a matter for trial.

9. As regards the third ground, this Court is not at all impressed with the contention raised on behalf of the applicant that the *panchnama* filed alongwith charge-sheet is rendered doubtful because it contains signatures affixed by the accused, witnesses and the concerned Officer only once. The said document clearly shows that such signatures are indeed affixed and

therefore, it cannot be insisted upon that in the absence of signatures occurring twice, the document is not to be taken into consideration.

10. As regards the fourth ground, this Court finds that the scientific material sought to be relied upon by the applicant could be placed before the Trial Court at the appropriate stage, so that the prosecution has the opportunity to counter the same. In any case, the aforesaid scientific material uses expressions like “generally” while indicating that contraband MD is found in white, off white or yellowish colour. Merely because the *panchnama* records the contraband found in possession of the applicant to be brown in colour, at this stage itself, it cannot be a ground for enlarging the applicant on bail. In any case, the chemical examination report dated 23<sup>rd</sup> February, 2024, specifically records that the contents of Exhibit-2 containing brown crystalline powder recovered from the applicant shows that it contains the contraband MD.

11. In view of the above, this Court finds no merit in the contention raised on behalf of the applicant.

12. As regards the period of incarceration suffered by the applicant, this Court finds that he was arrested on 26<sup>th</sup> October, 2023, for serious offences under the NDPS Act. The documents on record show that the prosecution intends to examine only 13 witnesses. The charge is yet to be

framed, but this Court is assured that the concerned Court would take steps for framing the charge at the earliest, for which the prosecution as well as the accused would cooperate with the concerned Court.

13. In view of the above, the application is dismissed. Liberty is reserved for the applicant to renew his prayer for bail, if there is no substantial progress in the trial in one year.

14. The observations made in this application are limited to deciding the prayer for bail.

(MANISH PITALE, J.)