

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

CRIMINAL BAIL APPLICATION NO. 3117 OF 2024

Jitendra Satishkumar Dua	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Kamran Shaikh a/w Mr. Changdev Shingade, Mr. Deepak Gupta, Advocate for the Applicant through V.C.

Ms. Gauri. S. Rao, A.P.P. for the Respondent – State.

Mr. Digambar Sontakke (PSI) Loni Kalbhor Police Station, present.

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CORAM	:	N. R. BORKAR, J.
DATE	:	25th APRIL, 2025

P.C.:

1. This is an application for regular bail.
2. The applicant came to be arrested in Crime No. 345 of 2023 registered at Loni Kalbhor Police Station, District : Pune for the offences punishable under Sections 8(c), 20(C), and 20(b)(ii) (a)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. On 30.05.2023, the present applicant was apprehended by the patrolling squad as his activities were found to be suspicious. The search of the applicant was taken

and 20 gm. 640 mg. of Mephedrone was found in his possession. The search of his car was taken and 81 gm. 340 mg. mephedrone was found in his car.

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 in terms of Rule 9 and 10 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, the samples are required to be drawn in the presence of the Magistrate. It is submitted that in the present case there is nothing in the charge-sheet to show that the samples were drawn in the presence of the Magistrate. It is submitted that the applicant is in jail for about 2 years and there are no other criminal antecedents against him.

6. On the other hand, the learned A.P.P for the Respondent-State submits that commercial quantity of contraband was found in possession of the applicant and thus unless the condition mentioned under Section 37 of the NDPS Act are satisfied, the applicant cannot be released on bail. To rebut the submission that the samples were not drawn in

presence of the Magistrate, the learned A.P.P. has produced on record the certificate issued by the Magistrate in terms of Section 52 of the NDPS Act.

7. Rule 9 and 10 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 reads thus :

“9. Samples to be drawn in the presence of Magistrate. – After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.

10. Drawing the samples. – (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of

that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

8. It appears that on 06.06.2023 samples were sent for analysis. Whereas inventory certificate issued by the Magistrate in terms of Section 52-A of the NDPS Act appears to be dated 03.05.2024. Considering the said fact and as there are no other criminal antecedents, 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. 345 of 2023 registered at Loni Kalbhor Police Station, District : Pune for the offences punishable under Sections 8(c), 20(C), and 20(b)(ii) (a)(b) 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 once in a month i.e. on first Saturday between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- (iv) Application stands disposed of accordingly.

(N. R. BORKAR, J.)