

Ajay

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

CRIMINAL BAIL APPLICATION NO. 823 OF 2025

Firoj Rabool Shaikh @ Time	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2100 OF 2024**

Karim Sattar Khan	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 3531 OF 2024**

Tayyab Mansur Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Kamlesh M. Satre, Advocate for Applicant in BA No.823/2025.
 - Mr. Vikas Tiwari a/w. Mr. Rohit Gupta and Mr. Gopal Singh, Advocates for Applicant in BA No.2100/2024.
 - Mr. Tohid Shaikh a/w. Ms. Anjali Patil, Advocates for Applicant in BA No.3531/2024.
 - Ms. Shilpa K. Gajare - Dhumal, APP for Respondent – State in BA No.823/2025.
 - Mr. Balraj B. Kulkarni, APP for Respondent – State in BA No.2100/2024 and BA No.3531/2024.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025.

P.C.:

- 1.** Heard Mr. Satre, learned Advocate for Applicant in BA No.823/2025; Mr. Tiwari, learned Advocate for Applicant in BA

No.2100/2024; Mr. Shaikh, learned Advocate for Applicant in BA No.3531/2024 and Ms. Gajare – Dhumal and Mr. Kulkarni, learned APPs for Respondent – State.

2. This is a group of three Bail Applications filed by Applicants seeking Regular Bail in connection with C.R. No.72 of 2023 registered with Anti Narcotic Cell, Worli Unit for offences under Section 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

3. There are total 6 accused persons in the crime. Bail Application No.823 of 2025 is filed by Applicant - Firoj Rabool Shaikh @ Time who is arraigned as Accused No.6 in the crime. Bail Application No.2100 of 2024 is filed by Applicant - Karim Sattar Khan who is arraigned as Accused No.2 in the crime. Bail Application No.3531 of 2024 is filed by Applicant - Tayyab Mansur Shaikh who is arraigned as Accused No.4 in the crime. As all Bail Applications emanate from the same crime, they are disposed of by this common order.

4. Briefly stated prosecution case is that Accused Nos.1, 2 and 3 were accosted in a chance recovery by prosecuting agency while patrolling on 10.08.2023 at 21:15 hours. During search 20 grams of alleged contraband Mephedrone (MD) was seized from Accused No.1; 15 grams of alleged contraband MD was seized from Applicant –

Accused No.2 and 58 grams of alleged contraband MD was seized from Accused No.3. It is prosecution case that Accused Nos.1 and 2 disclosed the name of Accused No.3 as supplier of the alleged contraband and in turn Accused No.3 disclosed name of Applicant - Accused No.4 as supplier and thereafter guided prosecution agency towards the place from where Accused No.4 allegedly operated. Accordingly at the said place, prosecution intercepted Accused Nos.4, 5 and 6 and during their search 26 grams of alleged contraband MD was seized from Applicant – Accused No.4; 25 grams of alleged contraband MD was seized from Accused No.5 and 60 grams of alleged contraband MD was seized from Applicant – Accused No.6. All three Applicants have been arrested on 11.08.2023 and are incarcerated since 1 year, 7 months and 25 days.

5. Mr. Satre, learned Advocate for Applicant – Accused No.6 in Bail Application No.823 of 2025 would submit that there is non-compliance of the procedure laid down under Section 50 of the NDPS Act and has drawn my attention to the appraisal letter at page No.81 which bears acknowledgment (signature) of the accused on the said letter and below his signature there is a handwritten endorsement in hindi language refusing exercise of right under Section 50 which does not bear the signature of Applicant. The same argument has also been raised by the other two Applicants before me.

5.1. He would submit that the Applicant – Accused No.6 and Accused No.5 were intercepted at the incident spot along with Accused No.4 whom the police wanted to intercept at instance of disclosure given by Accused No.3, however the said disclosure given by Accused No.3 has not been reduced in writing. He would submit that in his case quantity of the alleged contraband MD is 60 grams which includes the weight of the plastic zip-lock bag. He would submit that in order to correctly and precisely ascertain the weight of the contraband, weight of the plastic zip-lock bag ought to have been excluded as the quantity allegedly shown to be seized from Accused No.6 is a little above commercial quantity. Next he would submit that Accused No.6 is a young offender aged 21 years who is incarcerated since more than 1 year and 7 months pending trial and his further incarceration would lead to his extended contact with hardened criminals thereby diminishing the possibility of his reformation. He would submit that trial has not yet commenced, even charge has not been framed. In support of his submissions, he has placed reliance on two decisions of this Court in the case of *Altamash Yusuf Shaikh Vs. The State of Maharashtra*¹ and *Nasrin Basir Shaikh Vs. The State of Maharashtra*². Hence considering the flagrant non-compliance of mandatory provisions of Section 50 of the NDPS Act coupled with long

¹ Criminal BA No.2203 of 2024 decided on 17.03.2025

² Criminal BA No.4150 of 2024 decided on 05.03.2025

incarceration of the Accused, he would urge the Court to enlarge the Applicant – Accused No.6 on bail.

6. Apart from the submissions advanced by Mr. Satre, Mr. Tiwari, learned Advocate appearing for the Applicant – Accused No.2 would submit that Applicant has been intercepted with 15 grams of alleged contraband MD which is intermediate quantity and hence rigours of Section 37 of NDPS Act would not be applicable. He would submit that the contraband in the crime was deposited in the godown after a delay of 6 hours and furthermore there is a delay of 15 days in carrying out the inventory panchnama under Section 52A of NDPS Act. He would submit that the certification by Magistrate is also not in accordance with Form 5 of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 and hence violating Rules 8 and 18(1) and (2) of the said Rules. He would submit that the said issue is covered by the decision of this Court in the case of *Chandrabhan Janardhan Yadav Vs. State of Maharashtra*³. Hence he would submit that considering non-compliance of provisions of Section 50 of the NDPS Act as well as Section 52A alongwith the said Rules, Applicant – Accused No.2 may be enlarged on bail.

7. In addition to the above submissions Mr. Shaikh, learned Advocate for Applicant – Accused No.4 would additionally submit that the Applicant whom he is representing is accosted at the instance of

³ Criminal BA No.2254 of 2024 decided on 04.03.2025

alleged disclosure by Accused No.3 which has not been reduced in writing and hence the case of prosecution stands vitiated. He would submit that reasons for belief / arrest of Accused Nos.4, 5 and 6 have not been recorded by the prosecution which is mandatory as per provisions of Section 42 of the NDPS Act. Hence there is non-compliance of Section 42 of the NDPS Act in so far as case of Accused Nos.4 to 6 is concerned. He would submit that the quantity of alleged contraband seized from Accused No.4 is 26 grams which is intermediate quantity and hence rigors of Section 37 of NDPS Act would not be applicable to his case. Hence he would urge the Court to grant bail to the Applicant considering long incarceration pending trial since charge is not framed yet.

8. Mr. Kulkarni and Ms. Gajare – Dhumal, learned APPs appearing for Respondent – State have vehemently opposed the Bail Applications. They would persuade me not to consider the technical issues argued by Advocates for Applicants and consider the fact that they were arrested and found in conscious possession of commercial quantity of contraband. They would submit that any observation on the issues argued by Applicants would amount to a mini trial at the bail stage and it should not be done by the Court. They would submit that the total contraband seized from Accused persons in the crime is commercial quantity and therefore submit that rigors of Section 37 of the NDPS Act would be applicable to the case of all Applicants

requiring them to *prima facie* show that there are reasonable grounds to believe that they are not guilty of the alleged offence and in the present case Applicants have not overcome that hurdle. They would submit that considering that all Applicants are drug peddlers there is likelihood of them re-offending.

8.1. On the issue of non-compliance of provisions of Section 50 of NDPS Act, Ms. Gajare – Dhumal, learned APP has referred to and relied upon the decision of the Supreme Court in the case of *The State of Punjab Vs. Baljinder Singh*⁴ to submit that search and recovery from a bag, briefcase, container, etc does not come within the ambit of Section 50 of the NDPS Act. In view of the above submissions they would urge the Court to reject the Bail Applications.

9. With the able assistance of the learned Advocates at the bar, I have perused the record of the case.

10. The main limb of argument of learned Advocates for Applicants in the present case is non-compliance of Section 50 of the NDPS Act. Perusal of Section 50 appraisal letters at page No.76 onwards of Bail Application No.823 of 2025 reveal that Applicants before me were handed over the appraisal letters and their acknowledgment (signature) was obtained on the said letters. However below their signature, there is a handwritten endorsement in hindi

4 Criminal Appeal Nos.1565-66 of 2019 decided on 15.10.2019

language refusing exercise of right under Section 50 NDPS Act which *prima facie* appears to be written by the same person belonging to the prosecution on all letters and also does not bear signature of any of the Applicants – Accused. There is no plausible explanation given by the prosecution to justify the aforesaid non-compliance. *Prima facie* the endorsement is appended by the prosecution person rather the same person who has signed below it and this is impermissible in law. It *prima facie* vitiates the prosecution case. Submissions made by the learned prosecutors that it is a technical issue is preposterous and outrightly rejected. Prosecution Officers cannot conduct a procedure not known to law or not prescribed by the law. Rather this issue has to be looked at the inception stage since it involves liberty of an under-trial accused person.

11. The Supreme Court as well as this Court in a plethora of decisions have held that the procedure laid down under Section 50 of the NDPS Act is a procedural safeguard which has been inserted so as to check the misuse of power by the prosecuting agencies and avoid indictment of innocent persons which needs to be followed scrupulously. In this regard, it would be helpful to refer to the decision of the Supreme Court in the case of *Ranjan Kumar Chadha Vs. The State of Himachal Pradesh*⁵ wherein the Supreme Court has considered all the past decisions and summarized the requirements of Section 50

⁵ 2023 SCC OnLine SC 1262

of the NDPS Act. The relevant paragraph Nos. 65 and 66 are reproduced below:-

“65. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that “I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer.” This would lend more credence to the compliance of Section 50 of the NDPS Act. In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.

66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:—

- (i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.*
- (ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.*
- (iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by*

a Gazetted Officer or Magistrate.

- (iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.*
- (v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.*
- (vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.*
- (vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.*
- (viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.*
- (ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.*
- (x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”*

(emphasis supplied)

12. In the present case it is clear that the the prosecution has failed to follow guideline no.(ii) and (ix) which mandates prosecution to take down the refusal of exercise of right under Section 50 of NDPS Act in own handwriting of the suspect and discharge its burden *prima facie*. Moreover in the present case the endorsement of refusal of

exercise of the said right is written by the same person. The burden of proving compliance of Section 50 of NDPS Act is on prosecution, however at this *prima facie* stage prosecution has failed to give any plausible explanation for the non-compliance. Hence there is clear non-compliance of Section 50 of the NDPS Act.

13. In so far as submission of Ms. Gajare - Dhumal regarding non-application of Section 50 of NDPS Act as the contraband is seized from bags of Applicants and not person, the same has also been dealt with by the Supreme Court in the decision of *Ranjan Kumar Chadha (supra)*. Relevant paragraph No.121 of the decision reads thus:-

“121. The only idea with which we have referred to the various decisions of this Court starting with Balbir Singh (supra) till Dayalu Kashyap (supra) is to highlight that Section 50 of the NDPS Act has been tried to be interpreted and understood in many ways. As noted earlier, in some of the decisions of this Court, the concept of “inextricably linked to person” was applied. In other words, if the bag, etc. is in immediate possession of the accused and the search is undertaken of such bag, etc., even then, according to those decisions, Section 50 would be applicable. It could legitimately be argued that the interpretation of Section 50 restricting its scope only to the search of a person of the accused would frustrate the object as the apprehension of the person concerned may continue to subsist that he may still be implicated by the police or any other person for more stringent punishment of carrying commercial quantity by getting rid of the rigor of the mandatory provision of Section 50 by implanting the contraband in a vehicle, bag, etc. accompanying the person.”

14. From the above, it is settled by the Supreme Court that Section 50 is applicable when search of person along with his bag in his immediate possession is conducted as is done in the present case.

15. In addition to the above, Applicants are incarcerated since more than 1 year and 7 months and trial has not yet begun, moreover there is no possibility of trial completing in near foreseeable future. Shockingly prosecutors have no answer as to why the trials are not proceeding, why charge is not framed for years in Special Act matters. If this is the state of affairs, the trial will be delayed and it will be a near uncertainty to commence or complete in the near foreseeable future.

16. In that view of the matter, owing to non-compliance of the mandatory provisions of NDPS Act as delineated herein above coupled with long incarceration of all Applicants for more than 1 year and 7 months and certainty that trial will not commence and even be completed in the near foreseeable future, Applicants have made out a case for grant of bail. Hence, the following order:-

- (i) All Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- 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 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.

17. 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.

18. All three Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay