

Amberkar

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

**BAIL APPLICATION NO. 3937 OF 2024
WITH
INTERIM APPLICATION NO.5374 OF 2024**

Mohammed Mukhtar Jamir Ansari .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Pawan Kumar Dhand, Advocate for Applicant.
 - Ms. Mahalakshmi Ganapathy, APP for Respondent - State.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2025.

P. C.:

1. This Application is filed under Section 439 of Code of Criminal Procedure, 1973 for seeking regular bail in C.R. No. 07 of 2023 registered with D.B. Marg Police Station, Mumbai for offences punishable under Sections 8(c), 21(c) and 29 of the Narcotics Drugs and Psychotropic Substance Act, 1985 (for short '**NDPS Act**').

2. It is prosecution case that on 09.02.2023 at about 10:55 a.m. D.B. Marg Police Station received information that a person was arriving near Navjeevan Society for the purpose of selling Mephredrone (commonly known as 'MD'). The said information was conveyed to the Superior Officer and a crime detection squad was constituted to conduct the raid. Two panchas were brought and were apprised about the search, seizure and arrest under the NDPS Act,

accordingly they took search of the Police personnel and a pre-trap panchanama was prepared. It is prosecution case that at about 12:30 p.m. a man reached the incident spot in a taxi and halted in front of Bank of India near Navjeevan Society. It is stated that he was in possession of a bag. Raiding party found his movements suspicious and kept a close eye on him however when he tried to escape he was apprehended by the police party. Mr. Lokhande – Police Inspector apprised him of his rights under Section 50 of the NDPS Act in writing. Upon conducting his search, he was found in possession of commercial quantity of 65 grams of MD. The contraband was duly seized, sealed in an envelope and marked as 'Article – A' and offence was registered under Section 8(c), 21 (c) and 29 of NDPS Act.

3. Mr. Dhand, learned Advocate for the Applicant would submit that there is non-compliance of Section 42(1) of the NDPS Act that mandates the information received to be reduced down in writing which has not been done in this case. He would submit that the Inventory panchanama was drawn on 03.03.2023 after an unexplained delay of 22 days, casting a doubt on the prosecution case. He would submit that the outward numbers of the correspondence on record are not in sequence. He would submit that sample description of the contraband in the outward letter, CA Report and Inventory panchanama do not match which raises a doubt on prosecution case.

To support his submissions he has referred to and relied upon the decisions of this Court in the case of *Zadi Elayee Sande & Anr. Vs. The State of Maharashtra*¹ (Coram: Bharati Dangre, J.) and *Jahangir Abdul Rehman Shaikh Vs. The State of Maharashtra*² (Coram: Manish Pitale, J.) where the Court in similarly placed cases held in favour of the Accused considering glaring discrepancy in following the prescribed procedure.

3.1. That apart he would submit that Applicant is a Senior citizen aged 62 years old. He would submit that Applicant is a taxi driver, being the sole breadwinner of his family. He would submit that Applicant has no criminal antecedents and was arrested on 09.02.2023, he is incarcerated in jail for the past 2 years and 12 days. Hence he would urge the Court to allow the present Application.

4. **PER CONTRA**, Ms. Ganapathy, learned APP for the State would vehemently oppose the present Application. She would submit that 65 grams of MD recovered from the Applicant is of commercial quantity, therefore rigors of Section 37 of NDPS Act will apply. She would submit that Applicant was found in conscious possession of the banned contraband. She would submit that such offences are offences against the Society at large and will have to be viewed by the Court very strictly without any leniency. She would submit that Applicant

1 BA. 2796 of 2021, decided on 04.10.2022.

2 BA. 1589 of 2024, decided on 26.06.2024.

reached the incident spot to sell the contraband and that itself raises a strong doubt that other persons also might be involved in the illegal drug trade as disclosed by Applicant in his statement, wherein he has stated that he procured the contraband from two persons namely Irfan Koria and Rizwan Khan. This disclosure in itself suggests possible involvement of other persons in the illegal drug trade. He would submit that there exists a likelihood of Applicant re-offending himself, tampering with evidence and influencing witnesses if released on bail. Hence she would urge the Court to reject the Application.

5. I have heard Mr. Dhand, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent - State and perused the record of the case with their able assistance.

6. It is *prima facie* seen that there is a discrepancy in the sample description of the seized contraband forwarded for chemical analysis. It is seen that the outward letter / dispatch letter dated 08.03.2023 appended at page No. 38 of the Application records sample 'B-1' sent for Inventory panchanama, while the receiving letter dated 08.03.2023 records at the end of the page the receipt of sample 'B-2'. Further, the description of article forwarded to Chemical Analyser on 08.03.2023 appended at page No. 39 mentions receiving sample 'B-1'. However, it is also seen that the substance forwarded in form of Article i.e. sample 'B-1', has been analysed and report from the

Directorate of Forensic Science Laboratories, Mumbai dated 03.07.2023 appended at page No. 43 is placed on record. This *prima facie* shows and reflects discrepancy and inconsistency in the prosecution case. This discrepancy which has surfaced raises a doubt on the prosecution case entitling the Applicant to the benefit thereof.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“37. Offences to be cognizable and non-bailable:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

8. From the reading of Section 37 of the NDPS Act, it becomes clear that the legislature intends to deny bail to accused alleged to be in possession of commercial quantity of contraband in absence of court subscribing to a contrary view. However therefore if seen it does not rule out the facet of discretion of Court to grant bail. Furthermore the Court must be satisfied that the accused is unlikely to re-offend. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. In such cases, if we look realistically the provisions of Section 37 leave limited room for a possibility of granting bail to the accused. However employing such limitation would create a dichotomy in the current scenario where one common grievance is made before the Court repeatedly in matter after matter. However in the present case, there exists a *prima facie* glaring discrepancy that goes to the root of the matter, warranting grant of benefit of doubt arising from the facts of the present case.

9. In some of the following decisions of the Supreme Court concerning detention and imprisonment of undertrial prisoner / accused on being apprehended with substantial commercial quantity of various contraband, the Court has exercised its unfettered jurisdiction in releasing an undertrial based on the facts of the said cases by using its discretionary power:-

9.1. In the case of *Badsha Sk. Vs. State of West Bengal*³ the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years and 4 months granted him bail. The contraband in question was Codeine Phosphate, the commercial quantity of which is 1 kilograms when recovery of 100 bottles each of 100 ml. was allegedly made from the accused.

9.2. In the case of *Man Mandal and Anr. Vs. State of West Bengal*⁴ the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years granted him bail despite being alleged to be in possession of commercial quantity of contraband.

9.3. In the case of *Ankur Chaudhary Vs. State of Madhya Pradesh*⁵ the Supreme Court considering long incarceration of an

3 2023 SCC OnLine SC 1867

4 2023 SCC OnLine SC 1868

5 Petition for Special Leave to Appeal (Cri) No. 4648 of 2024

undertrial-accused granted him bail to an undertrial-accused who was incarcerated for about 2 years.

9.4. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*⁶ the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

9.5. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*⁷ the Supreme Court considering long incarceration of an undertrial - accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of poppy straw.

9.6. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*⁸ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

10. In view of the above observations the *prima facie* discrepancy in the prosecution case it accrues to the benefit of the Applicant. Though chargesheet has been filed, the trial is proceeding

6 2022 SCC OnLine SC 2068

7 Cri. Appeal No.1204 of 2024

8 BA No.713 of 2024 decided on 20.01.2025

at the snail's pace with no likelihood of its conclusion in the foreseeable future. Applicant is the sole breadwinner of his family. Considering the aforesaid mitigating facts alongwith Applicant's incarceration for 2 years 12 days, I am persuaded to consider the Applicant's case

11. In view of the above observations, Bail Application is allowed on the following terms and conditions:-

- (i)** Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii)** Applicant shall report to the Investigating Officer of concerned Police Station on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months or as and when called;
- (iii)** Applicant 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 Applicant does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv)** Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court.

- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail cancellation of this order.

12. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on the merits of the case.

13. Bail Application stands allowed and disposed.

14. Interim Application No. 5374 of 2024 is also disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
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2025.02.26
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