

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4053 OF 2024

Akbar Usman Shaikh	.. Applicant
Versus	
State of Maharashtra.	.. Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 960 OF 2025

Dilip Shivaji Rathod	.. Applicant
Versus	
State of Maharashtra.	.. Respondent

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- Mr. Shubham S. Upadhyay a/w Mr. Aryan Kotwal, Advocates for Applicant in BA No.4053 of 2024.
 - Mr. Harshad G. Meshram a/w Mr. Ratnadeep G. Meshram and Sweta Khekare, Advocates for Applicant in BA No.960 of 2025.
 - Ms. Mahalakshmi Ganapathy, APP for State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 25, 2025

P. C.:

1. Heard Mr. Upadhyay, learned Advocate for Applicant in BA No.4053 of 2024; Mr. Meshram, learned Advocate for Applicant in BA No.960 of 2025 and Ms. Ganapathy, learned APP for State.

2. Applicants - accused has filed the present Applications for regular bail in connection with Crime No. 100 of 2024 registered with APMC Police Station, Vashi Navi Mumbai for the offence punishable

under Sections 8(c), 21(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS Act**").

3. This is a group of two Bail Applications filed by Applicants Accused Nos. 1 and 3 in the same crime. Accused No.2, 4 and 5 have already been enlarged on bail by this Court and by the learned Sessions Court orders of which are appended to the Application. Applicants have been indicted in the present crime on being apprehended alongwith possession of the alleged contraband.

4. *Prima facie* discrepancy has been noted in the prosecution case with respect to identification and weight of the alleged contraband. In the seizure panchanama weight of the alleged contraband is shown to be 55.53 grams whereas in the inventory panchanama the same has been shown to be 70 grams.

5. The learned Prosecutor Ms. Ganapathy would submit that in view of recovery commercial quantity of contraband the complicity of Applicants in the present crime does not get diluted and rigours of Section 37 would apply to the present case. Learned Prosecutor would be absolutely right in her submission provided prosecution while handling the alleged contraband at the time of seizure and inventory follow the rules prescribed under the NDPS Act (Seizure, Storage, Sampling And Disposal) Rules, 2022) in accordance with provisions of

Section 52A (2)(3) read with provisions of Subsection 2 of Section 42. When such *prima facie* dichotomy and discrepancy as noted above is noticed by the Court the prosecution case *prima facie* stands vitiated and becomes a suspect.

6. In that view of the matter and having considered Bail Application of Accused No.2 by order dated 21.02.2025 in Bail Application No.474 of 2025 the Applicants before me are entitled to bail on the ground of parity also.

7. In view of the above *prima facie* observations and on the ground of parity, Bail Applications of Applicants are allowed subject to the following terms and conditions:-

(i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each with one or two sureties in the like amount;

(ii) Before their actual release from jail, Applicants shall furnish their address where they proposes 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 01.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the 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.

8. 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.

9. Both the Bail Applications are allowed and disposed.

PR. Rajput

[MILIND N. JADHAV, J.]