

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

CRIMINAL BAIL APPLICATION NO. 4440 OF 2024

Abdul Mushrafali Karim @ Siddhiqi ...Applicant

VERSUS

The State of Maharashtra ...Respondent

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Mr. Ratnish Shobhnath Dubey & Ms. Bhagyashri Prakash Roundal, Advocate for the Applicant.

Mr. Vinod Chate, A.P.P. for the Respondent – State.

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CORAM : N. R. BORKAR, J.
DATE : 16.04.2025.

P.C.:

1. This is an application for regular bail.
2. The applicant came to be arrested in Crime No. 664 of 2023 registered at Chikhali Police Station, Dist- Pune for the offences punishable under Sections 8(c), 22(c) & 29 of the Narcotic Drugs and Psychotropic Substances Act.
3. On 10.10.2023, at about 17.45 hrs. the patrolling squad had apprehended the present applicant and other co-accused Ramkumar Mishra as their activities were found to be suspicious. The search of the applicant and co-accused was taken and 116 grams Mephedrone (M.D.) was found in their possession. Out of the said 116 grams Mephedrone (M.D.), 62 gram of Mephedrone was found in

the possession of the present applicant.

4. The learned counsel for the applicant submits that there is non-compliance of Section 52-A of the NDPS Act. It is submitted that samples were not drawn in accordance with Rule 9 and 10 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. It is submitted that Rule 13 mandates that the samples after being verified by the Magistrate must be forwarded to FSL without any delay. However in the present case, the samples were forwarded to FSL after 26 days. It is further submitted that there is variance in the quantity of contraband mentioned in the seizure panchnama and the inventory prepared under Section 52-A of the NDPS Act. It is submitted that the applicant is in jail for about one year and six months and the trial has not commenced. It is submitted that there are no other criminal antecedents against the applicant. The learned counsel for the applicant submits that in similar circumstances, this court in ***Abdul Kadir Ghogari V.s Union of India & Anr.***¹ and the Hon'ble Supreme Court in ***Hanef Kharsani @ Hanef Sheikh V.s Union of India***²., granted bail to the accused therein.

5. On the other hand, the learned APP for the Respondent/State submits that the commercial quantity of contraband was found in possession of the present applicant and thus Section 37 of the NDPS would attract in the present case. The learned APP submits that lapses if

1 Bail Application No. 1646 of 2022 decided on 15.9.2023

2 Special Leave Petition (Cri.) No. 2685 of 2024 decided on 8.4.2024

any, while drawing the samples or delay in sending the samples for analysis by itself would not entitle the applicant for bail. In support of the said submission, the learned APP has relied upon the judgment of Hon'ble Supreme Court in ***Narcotics Control Bureau vs. Kashif***³

6. The Hon'ble Supreme Court in *Narcotics Control Bureau vs. Kashif (supra)*, in paragraph 39, has observed thus:

"39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1)

3 Criminal Appeal No. 5544 of 2024 decided on 20.12.2024

thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

(emphasis supplied)

7. I have perused the charge-sheet. There is a material to *prima facie* infer the involvement of the applicant in the alleged crime. The applicant was found in possession of commercial quantity. In view of the decision of the Hon'ble Supreme Court in **Narcotics Control Bureau Vs. Kashif** (supra), I am not inclined to release the applicant on bail on the ground of alleged lapses with regard to drawing of samples or not sending the samples immediately. The application is rejected.

(N. R. BORKAR, J.)