

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.4654 OF 2024

Mohammedali Irshadali Qureshi .. Applicant

Versus

The State Of Maharashtra .. Respondent

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- Mr. Prasannan Namboodiri a/w Ms. Pratibha Namboodiri, Mr. Rishabh Sinha, Ms. Pallavi Dabak and Ms. Nakshatra Mahadik, Advocates for Applicant.
- Ms. Shilpa K. Gajare-Dhumal, APP for State.
- GPSI – M.B. Parab, Crime Branch Thane (ANC), present.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 06, 2025

P. C.:

1. Heard Mr. Namboodiri, learned Advocate for Applicant and Ms. Gajare-Dhumal, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No.224 of 2023 registered with Chitalsar Police Station, Thane for the offence under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS Act**").

3. Applicant is in incarceration since 11.09.2023 for the past 1 year 7 months and 25 days after having apprehended and arrested from a public place in Thane area. Applicant was found with 56 grams of Mephedrone contained in 9 Zip pouch bags alongwith his personal belongings.

4. Learned Advocate for Applicant has raised *prima facie* substantial grounds which have no answer whatsoever emanating from the prosecution case. Transgression of subsection 1 and 2 of Section 42, mixing of non identical material namely violation of Rule 3 of the Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, violation of Rule 10 pertaining to sampling and inventory procedure leading to violation of Section 52A (2) and (3) is *prima facie* seen from the record of the case.

5. It is *prima facie* also seen that prosecution received an intelligence input from a vigilant citizen which is stated in the seizure panchanama dated 11.09.2023 appended at page No.35 of the Application. However, receipt of said intelligence information has not been reduced into writing by the person who has received the said information neither it has been conveyed to the superior officer in compliance of the provisions of the NDPS Act. This Court has time and again held that procedure under the NDPS Act is required to be scrupulously followed insofar as compliances are concerned. These are not mere aberrations which can be proved by the prosecution at the time of trial because if such aberrations are allowed the prosecution officers will function according to their own code of conduct which is impermissible in law. That apart it is seen that recovery of the alleged contraband was in 9 different zip pouches which have been mixed

which is also impermissible in law in view of the mandatory procedure contemplated under Rule 3 of the Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. This issue is covered by the decision of this Court in the following following cases:-

- (i) *Union of India Vs. Bal Mukund and Ors.*¹
- (ii) *Shabbir Usman Shaikh Vs. The Union of India and Anr*²
- (iii) *Sameer Rais Shaikh Vs. The State of Maharashtra*³
- (iv) *Mukesh Kumar Saha Vs. The State of Maharashtra*⁴
- (v) *Zaheer Gayasuddin Shaikh Vs. The State of Maharashtra and Anr*⁵

6. *Prima facie* it is seen that entire search and seizure operation was carried out under the authorization of Asst. Police Inspector Nilesh More. However seizure panchanama appended at page Nos. 35 and 36 does not bear the signature of said Asst. Police Inspector whereas it has been signed by Police Sub-Inspector Dipesh Kini.

7. In view of the above *prima facie* transgressions which are glaringly apparent on the face of record and considering incarceration of the Applicant for the past 1 year 7 months and 25 days, case for grant of bail is clearly made out by the Applicant .

1 (2009) 12 SCC 161

2 BA No.731 of 2024 – Decided on 03.11.2023

3 BA No.2108 of 2023 - Decided on 03.11.2023

4 BA No.693 of 2023 – Decided on 30.11.2023

5 BA No.2742 of 2023 – Decided on 14.03.2024

8. Needless to state that, prosecution can prove its case with respect to complicity of Applicant in the crime at the time of trial.

9. In view of my above *prima facie* observations, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m.

to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) 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 he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) 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.

10. 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.

11. Bail Application is allowed and disposed.

ER. Rajput

[MILIND N. JADHAV, J.]