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

CRIMINAL BAIL APPLICATION NO. 409 OF 2025

Vikas Sanjay Bhoir .. Applicant
Versus
Union of India & Anr. .. Respondents

WITH

CRIMINAL BAIL APPLICATION NO. 4984 OF 2024

Irfan Farookh Shaikh .. Applicant
Versus
Union of India & Anr. .. Respondents

WITH

CRIMINAL BAIL APPLICATION NO. 4704 OF 2024

Arif Mohd. Kasim Shah .. Applicant
Versus
Union of India & Anr. .. Respondents

WITH

CRIMINAL BAIL APPLICATION NO. 4699 OF 2024

Naveenkumar Swaminathan Sundar Rao Pingale .. Applicant
Versus
The Union of India & Anr. .. Respondents

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- Mr. Sandeep Karnik, Advocate for Applicant in BA No.409/2025.
- Mr. Jitendra R. Gautam a/w. Ms. Poonam Pal, Advocate for Applicant in BA No.4984/2024.
- Mr. Ayaz Khan a/w. Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant in BA No.4699/2024 & BA No.4704/2024.
- Mr. Shreeram Shirsat, SPP a/w. Ms. Karishma Rajesh, Mr. Nikhil Daga and Mr. Shekhar Mane for Respondent No.1 – Union of India in all matters.
- Ms. Savita M. Yadav, APP for Respondent No.2 – State in BA No.409/2025.
- Mr. Hitendra J. Dedhia, APP for Respondent No.2 – State in BA No.4984/2024.
- Mr. R.M. Pethe, APP for Respondent No.2 – State in BA Nos.4704/2024 and 4699/2024.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2025.

P.C.:

1. Heard Mr. Karnik, learned Advocate for Applicant in BA No.409/2025; Mr. Gautam, learned Advocate for Applicant in BA No.4984/2024; Mr. Khan, learned Advocate for Applicants in BA No.4699/2024 & BA No.4704/2024; Mr. Shirsat, learned SPP for Respondent No.1 – Union of India and learned APPs.

2. This is a group of four Bail Applications filed by Applicants in connection with the same crime namely F. No. NCB/MZU/C.R.34-2023 registered with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai for offences punishable under Sections 8(c), 22(c), 23(c), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

3. As the present four Bail Applications arise from the same crime, they are disposed of by this common order. There are total nine accused persons arraigned in the crime. 2 out of the 9 accused persons have been enlarged on anticipatory bail and 4 out of the remaining 5 are before the Court seeking bail. 2 accused persons namely Accused Nos. 8 and 9 are absconding.

4. Bail Application No.409 of 2025 is filed by Applicant - Vikas Sanjay Bhoir who is arraigned as Accused No.4 in the crime. Prosecuting Agency i.e. Narcotics Control Bureau has filed Affidavit-in-

Reply dated 07.03.2025 to oppose the said Bail Application. Bail Application No.4984 of 2024 is filed by Applicant - Irfan Farookh Shaikh who is arraigned as Accused No.5 in the crime. Prosecuting Agency i.e. Narcotics Control Bureau has filed Affidavit-in-Reply dated 03.03.2025 to oppose the said Bail Application. Bail Application No.4704 of 2024 is filed by Applicant - Arif Mohd. Kasim Shah who is arraigned as Accused No.6 in the crime. Prosecuting Agency i.e. Narcotics Control Bureau has filed Affidavit-in-Reply dated 20.03.2025 to oppose the said Bail Application. Bail Application No.4699 of 2024 is filed by Applicant - Naveenkumar Swaminathan Sundar Rao Pingale who is arraigned as Accused No.7 in the crime. Prosecuting Agency i.e. Narcotics Control Bureau has filed Affidavit-in-Reply dated 07.03.2025 to oppose the said Bail Application.

5. Accused Nos.4 and 5 are arrested on 30.12.2023 whereas Accused Nos.6 and 7 are arrested 02.01.2024 and 03.01.2024 respectively. All Applicants are in incarceration since then, pending trial. Investigation is complete and charge-sheet has been filed.

6. Briefly stated on receiving intelligence information on 19.12.2023, a raid was conducted at the premises of Ms. DHL Express India Private Limited, Andheri (East) and one parcel was intercepted which was to be dispatched to Australia. Name of sender on the parcel was of Mohd. Yusuf from Sujapur, Siddharth Nagar, Uttar Pradesh.

The parcel was opened and in that parcel containing a stainless steel table with two shelves, two packets purported to be Amphetamine weighing 985 grams and 986 grams; 4 packets purported to be Amphetamine weighing 992 grams, 986 grams, 993 grams and 995 grams and further 4 packets with purported Amphetamine weighing 985 grams each were recovered from the hidden cavity in the shelves of the stainless steel table. Panchnama was concluded at 20:30 hours. There was a disclosure note which revealed that the parcel was booked by Accused No.1. His statement was recorded and on the same date i.e. 19.12.2023 he was arrested. He disclosed the name of Accused Nos.2 and 3 being involved in the crime. On 20.12.2023 Accused Nos.2 and 3 were arrested after recording their respective statements. On the same date, raid was carried out at the residence of Accused No.2 at Room No.2, ground floor, A Wing, Suman Arcade, Bhayander (East) which lead to seizure of 9800 tablets of Zolpidem, 18700 tablets of Tramadol Hydrochloride being the alleged contraband. *Inter se* statements recorded by Accused Nos.1, 2 and 3 disclosed their role. On 28.12.2023 supplementary statement of Accused No.1 was recorded wherein he disclosed name of Accused No.4 being supplier of the contraband Zolpidem and Tramadol tablets which were seized from Accused No.2's residence. On 30.12.2023 Accused No.4's statement was recorded who disclosed that he booked the parcel of Tramadol and Zolpidem tablets received from Accused No.5 through Porter App

and delivered it to Accused No.1, pursuant to which he was arrested. On the same date, Accused No.5's statement was recorded who disclosed name of Accused No.6 as supplier of the contraband, pursuant to which he was arrested. Accused No.5 recorded his statement wherein he disclosed that the parcel containing the alleged contraband was kept in Accused No.6's warehouse and it was received from Accused No.7. On 01.01.2024 Accused No.6's warehouse situated at Gala No.10, Business Point, Andheri (East) was raided but nothing incriminating was recovered therefrom. On 02.01.2024 and 03.01.2024 statement of Accused No.6 was recorded wherein he disclosed that he received the parcel from Accused No.7 for dispatching the same to the United States, pursuant to which he was arrested. On the same date, Accused No.7's statement was recorded wherein he disclosed that a person called Rajabhai had given the parcel to him for dispatching the same to the United States, pursuant to which he was arrested.

7. From the above, *prima facie*, it is seen that the Applicants before me namely Accused Nos.4 to 7 have all been arrested on the basis of disclosure statements. As per the prosecution case it is *prima facie* seen that after the parcel was intercepted at the DHL Express India Private Limited's Office the Investigating Officer conducted an investigation and in that investigation, inquiry was made with the person who had handled the said parcel for courier and on investigation it was revealed that Accused persons were involved with

the movement of the said parcel containing the contraband. In that view of the matter, Accused No.1 was summoned by the Investigating Officer to record his statement under Section 67 of the NDPS Act pursuant to which he was arrested and the chain of arrest of the remaining co-accused persons was carried out by prosecution. On the whole what is *prima facie* seen is that the entire prosecution case is based upon the disclosure statements indicting the Applicants as also all other co-accused persons in the crime. What is crucial to note in respect of all accused persons before me is that none of them have been found to be in conscious possession of any contraband having been recovered from them or their place of residence. The entire case of the prosecution revolves around the naming of the Accused persons / Applicants before me in the Enquiry conducted under Section 67 of the NDPS Act and nothing more.

8. Learned SPP Mr. Shirsat would however refute the same and draw my attention to the Affidavit - in - reply filed in all four bail Applications. He would persuade me to consider that apart from the disclosure statement, there is other material in the form of WhatsApp messages exchanged between the Accused persons, *inter alia*, discussing procurement and movement of the alleged contraband as also with the principal conspirator namely a person called A. Raja @ Rajabhai arraigned as Accused No. 8 to show their complicity in the crime. He has taken me through the Affidavit-in-Reply filed by the

prosecuting agency – Narcotics Control Bureau in all the aforementioned 4 Bail Applications and has contended that Applicants before Court are part of a drug syndicate who have been arrested and if they are enlarged on bail there is every likelihood that they will re-offend and tamper with the evidence and influence the witnesses and would be an impediment for trial. In that view of the matter he would submit that none of the Applicants should be released on bail.

8.1. In support of his aforesaid submissions, he has placed on record a compilation running into 90 pages comprising of three parts, first part containing text of WhatsApp messages involving Accused No. 8 i.e. the person called Rajabhai, second a summary of statement of transactions for the period from 01.08.2023 to 31.08.2023 of the bank account of Mr. A. Kandhaswamy Raja namely the said Rajabhai to show that certain amounts of Rs.56,000/- and Rs.30,000/- were transferred to Accused No.7 to contend that the said money was paid for trafficking of the alleged contraband and third the Call Detail Records of Bharti Airtel Limited of one mobile number 9892683548 from 01.09.2023 to 31.12.2023 to contend that there has been exchange of phone calls between the said Rajabhai from whom the alleged contraband originated and was received by Accused No.7.

9. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case. On overall *prima facie*

consideration, it is seen that all four Applicants before me are prosecuted by the prosecution for the alleged contraband recovered from Accused No.2 on 20.12.2023. The movement of the parcel i.e. alleged contraband is *prima facie* delineated herein above which is the prosecution case for indicting the Applicants. The *prima facie* material and evidence rather incriminating material relied upon by prosecution is one and only namely the confessional statements recorded by the prosecution officers under the NDPS Act of the co-accused persons to indict the Applicants and nothing more.

10. Applicants before me have all undergone incarceration of almost 1 year 2 months in custody without any charge being framed till date neither there is any recovery of any contraband from them. There is neither any incriminating material placed before me to show that Applicants have nexus with the seized contraband from Accused No.2 nor the prosecution has *prima facie* proved any money trail leading to the Applicants before me. What is *prima facie* seen by the Court from the record is that all four Applicants before me are indicted and arrested only on the basis of statements recorded by co-accused persons and confessional statements recorded by Accused No.1 in his own case and no other material emanating from the charge-sheet. Though it is argued by prosecution that Accused No.6 has stored the alleged contraband for more than 2 and half months in his warehouse, there is no incriminating material placed on record at this stage to

prima facie believe the said charge. The Call Data Records which are attempted to be referred to and relied upon are without transcripts and thus the alleged charge of drug trade or conspiracy or illicit trade is *prima facie* not established. In so far as reliance of the prosecution on the recorded statements is concerned, the Supreme Court in the case of ***Tofan Singh Vs. State of Tamil Nadu***¹ has categorically held that statements recorded under Section 67 of the NDPS Act are not admissible in evidence and they are hit by Section 25 of the Indian Evidence Act, 1872.

11. The Supreme Court in the case of ***Tofan Singh (supra)*** Court held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Indian Evidence Act, 1872 to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution of India.

¹ (2021) 4 SCC 1

12. Mr. Khan has placed before me an order of the Supreme Court passed in the case of *Sharik Khan Vs. Narcotics Control Bureau*² and in the context of statements recorded under Section 67 of the NDPS Act has clarified that the authorities and officers of the Narcotics Control Bureau must comply and abide by the judgment of the Supreme Court in the case of *Tofan Singh* (*supra*).

13. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*³ the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

14. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*⁴ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

² SLP (Crl.) No.48232/2023 decided on 06.03.2024

³ 2023 SCC OnLine 135

⁴ (2023) SCC OnLine Del 134

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon"ble Court in State v. Navjot Sandhu @ Afsan Guru Crl. A. No. 80/2003 wherein this Hon"ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon"ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

- 1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.*
- 2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.*
- 3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.*
- 4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.*
- 5. Only such portion of the information as is distinctly connected with the said discovery is admissible.*
- 6. The discovery of the fact must relate to the commission of some offence.*

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other

'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a "new fact" thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence."

15. In the case of *State Vs. Pallulabid Ahmad Arimutta*⁵, the Supreme Court held that CDR details of some of the accused or allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Hence it is clear that statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

16. From the above it is *prima facie* concluded that in view of the material placed on record the prosecution can prove its case on evidence in accordance with law to prove the complicity of the Applicants. It is seen that according to prosecution the present case involves offences of conspiracy between the accused persons for trafficking of the alleged contraband. Charge sheet shows that the said A. Kandhaswamy Raja @ Rajabhai is arraigned as Accused No.8 and is shown as absconding accused whereas there is one more accused namely Vikas Mani arraigned as Accused No.9 who is also shown as absconding.

17. It is settled law that an under-trial accused cannot be incarcerated for a long period without trial as the same is in teeth with

5 SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

his fundamental right to speedy trial and personal liberty as guaranteed under Article 21 of the Constitution of India. As the present case involves contraband in commercial quantity, I deem it appropriate to refer to the decisions of the Delhi High Court in the case of *Vishwajeet Singh Vs. State (NCT of Delhi)*⁶ wherein the Delhi High Court has observed that Section 37 of the NDPS Act provides for stringent conditions to be satisfied by the accused for his enlargement on bail, however the same does not fetter grant of bail to the accused on the ground of undue delay in the completion of trial.

18. In the above circumstances, incarceration of more than 14 months of the Applicants before me in the present crime pending trial with no hope of the trial commencing or completing in the near foreseeable future coupled with their sole indictment in the matter on the basis of statement of co-accused entitles the Applicants to be enlarged on bail. Hence Applicants therefore in my opinion can be released on bail.

19. All four Bail Applications are allowed on the following terms:-

- (i) All four Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;

⁶ 2024 DHC 1554

- (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 his 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; Applicants shall deposit their passport, if any, with the Trial Court within a period of two weeks from their release;

(vii) Applicants shall not influence with 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.

20. 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.

21. All four Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]