

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4702 OF 2024

Rafik Shakil Shah	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

-
- Ms. Lochan Chandka, Advocate for Applicant.
 - Mr. Balraj B. Kulkarni, APP for Respondent – State.
 - Mr. Suresh Dambre, API – CBD Belapur Police Station present.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025.

P.C.:

1. Heard Ms. Chandka, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.193 of 2023 registered with C.B.D. Belapur Police Station for the offense under Sections 8(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. Applicant is arraigned as Accused No.2 and has been apprehended with 62 grams of Mephedrone (MD).

4. Ms. Chandka, learned Advocate for Applicant has raised two principal grounds. She has drawn my attention to the letter of appraisal which is given under Section 50 of the NDPS Act to the

Applicant appended at page No.44 of the Application. The said letter *prima facie* states that Applicant would have the option of taking search before the nearest न्यायदंडाधिकारी (Magistrate). The said prefixes the word "न्याय" before the word "दंडाधिकारी" (Magistrate) in the appraisal letter is *prima facie* impermissible.

5. What is contemplated under Section 50 of the NDPS Act is a right to be appraised to the person who is about to be searched to be taken before the nearest Magistrate or Gazetted Officer and nothing more. This specific dichotomy as observed in the appraisal letter is covered and decided by the decision of this Court in the case of ***Ashwinikumar Sarvansingh Chouhan Vs. State of Maharashtra***¹ wherein the Court was faced with an identical situation where the word "न्याय" before the word "दंडाधिकारी" (Magistrate) was used in the appraisal letter and the Court after analyzing the provisions of Section 50 of the NDPS Act as also after referring to the decisions of the Supreme Court in the case of ***State of Punjab v. Baldev Singh***² held that appraisal of right under Section 50 seems to have been conveyed wrongly to the accused person.

6. This Court has also adopted to the aforesaid position of law while deciding Bail Application No.763 of 2025 in the case of ***Jahid Chand Sayyed Vs. State of Maharashtra*** on 01.04.2025.

¹ 2001(4) Mh.L.J. 57

² (1999) 6 SCC 172

7. Next, Ms. Chandka, learned Advocate for Applicant has drawn my attention to page No.94 which is the certificate issued by the Magistrate under Section 52-A(3) of the NDPS Act. There are two discrepancies which are *prima facie* noted in the certificate, first pertains to drawing of the samples for the purpose of analysis. It is *prima facie* case that drawing the prescribed samples mandatorily regulates sample size of 5 gram each. The drawing of samples are 3.01, 3.14 gram and 3.00 gram. Such drawing of samples according to the weight which is not prescribed by the Rules is *prima facie* impermissible and various the transgression of the procedure contemplated under the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Said action on the part of the prosecution is impermissible in law and has been duly covered by the decision of this Court in the case of ***Jitendra Subhash Chavan v. The State of Maharashtra***³. That apart the certificate is also not issued in Form No.5 as contemplated by the provisions of Section 52-A(2) read with (3) and Rules 8(1) of the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022.

8. Mr. Kulkarni, learned APP has vehemently opposed the Bail Application. He has drawn my attention to the Affidavit dated 04.02.2025 filed by API Dambare to resist the bail Application and

³ Order dated 04.03.2025 in Bail Application Nos. 2818/2024 & 3832/2024

would submit that Applicant is apprehended with 62 grams of MD which is commercial quantity and hence rigours of Section 37 would apply to the case of the Applicant. He would submit that the investigation has revealed that Applicant has purchased the said contraband from the absconding accused. He would submit that there is evidence on record to prove compliance of Section 50 of the NDPS Act. He would submit that if Applicant is enlarged on bail there is every likelihood that he may abscond and would not be available for trial. Hence he would pray for rejection of the Bail Application.

9. With the able assistance of learned Advocates at the bar, I have perused the record of the case.

10. In view of the above, the case of seizure of the prosecution *prima facie* stands vitiated for not complying with the mandatory provisions of the NDPS Act discussed herein above, Applicant has made out a case for grant of bail. Needless to state that complicity of the Applicant shall be proved by the prosecution at the time of trial.

11. Hence, 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) 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;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant 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, the Applicant shall mark presence on the next working day;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant 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.

12. 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.

13. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date:
2025.04.08
10:24:35 +0530