

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5293 OF 2024

Fransis Augustin D'souza

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Rajkumar Rajhans for the Applicant.

Ms. Megha S. Bajoria, A.P.P. for Respondent-State.

Mr. R.V. Londhe, A.P.I., ANC Ghatkopar Crime Branch, Mumbai,
present.

CORAM : DR. NEELA GOKHALE, J.

DATE : 6 OCTOBER 2025

P.C.:

1. Applicant seeks his release on bail in connection with the C.R. No.152 of 2022, dated 28th June, 2022, registered with ANC, Ghatkopar Unit, Mumbai for the offences punishable under Section 8(c) r/w Section 22(c) and Section 29 of Narcotic Drug and Psychotropic Substances Act, 1985 ("the NDPS Act").

2. The case of the prosecution is that on 28th June, 2022, while on patrolling duty, the Applicant and co-accused, namely, Ashfak Ayub Shaikh were found under suspicious circumstances and during their search, 45 grams of Mephedrone (MD) was recovered

from the co-accused Ashfak Ayub Shaikh and 154 gram of MD was recovered from the possession of the present Applicant. Thus, the F.I.R. came to be registered against both the accused.

3. The Applicant made a bail application before the Special Court, NDPS, Greater Bombay, but by an order dated 10th April, 2024, the said bail application came to be rejected. Hence, he is before this Court seeking the relief as prayed.

4. Mr. Rajkumar Rajhans, learned Counsel appearing for the Applicant submits that the Applicant was arrested on 28th June 2022 and he has already undergone three years and three months of incarceration. He submits that the co-accused is granted bail on the ground that the substance recovered from him, was of non-commercial quantity. He brings to my attention the panchnama, which records that after the police recovered 154 grams of MD from him, it was kept in a transparent plastic zip lock bag, which was in turn, placed black coloured transparent plastic bag, which was in turn, kept in green coloured envelope. He then points to the inventory taken before the Magistrate, accompanied with a certificate by the Magistrate under the NDPS Act dated 20th August 2022. He points to the inventory to argue that the said envelope marked Exhibit 'B' was opened before the Magistrate and from

inside the envelope, was found a transparent plastic bag tied with the knot. On opening the knot of the plastic bag, the MD was noted. Thus, Mr. Rajkumar Rajhans submits that there is a discrepancy between the entry in the panchnama and that observed in the inventory. He thus submits that on this ground, it can be inferred that the Applicant has not committed any offence under the NDPS Act. He thus prays that the Applicant be enlarged on bail.

5. Per contra, Ms. Megha S. Bajoria, learned A.P.P. appearing for the Respondent-State submits at the outset that, charges are framed and the prosecution intends to examine only eight witnesses. In fact on the previous date, one witness was already present before the Trial Court for recording evidence but for some reasons the trial could not proceed. She, however, states that the trial is likely to conclude at the earliest.

6. Insofar as the objection regarding the discrepancy relating to the plastic pouch as raised by Mr. Rajkumar Rajhans, learned Counsel for the Applicant is concerned, Ms. Megha Bajoria, learned A.P.P. points to a letter of the Assistant Police Commissioner of ANC Ghatkopar written to the Officer In-charge of the Store. This is a letter communicating to the said Officer in-charge of the Azad Maindan Police Station that the substance which was taken from their custody for the purpose of carrying out the inventory before the learned Magistrate was being

returned. The description of the packet which was returned, clearly indicates, according to Ms. Bajoria, presence of the black plastic bag. Hence, she submits that in the inventory as pointed out by Mr. Rajkumar Rajhans, the absence of the black transparent plastic bag was a mere typographical error. In any case, she submits that the Applicant was found in conscious possession of the substance. Ms. Bajoria, also refers to the second part of the inventory letter, which also indicates that there was a transparent plastic bag, in which another plastic bag was placed and was removed. Thus, she submits that there is no discrepancy in the panchnama as compared with the inventory document. She further points to the antecedents in respect of the Applicant, as there is C.R.No.58 of 2021 registered against him for similar offence under the NDPS Act. She submits that as much as 250 grams of MD was recovered from him in the previous case. The Applicant is on bail in the previous C.R. when he was apprehended committing the present offence.

7. In these circumstances, Ms. Bajoria, learned A.P.P. states that this application be rejected.

8. I have heard the learned Counsel appearing for both the parties and perused the record with their assistance.

9. Admittedly, the trial in this case is in progress. There are only eight witnesses, that the prosecution intends to examine. Undoubtedly, the Applicant has a criminal antecedent in respect of similar offence under the NDPS Act. The ground of discrepancy as mentioned by

Mr. Rajkumar Rajhans, learned Counsel for the Applicant is sufficiently explained by Ms. Megha Bajoria, learned A.P.P. The fact is that a quantity of 154 grams of MD was seized from the Applicant.

10. In any case, the trial is progressing substantially and is likely to conclude within a reasonable time. The quantity of MD recovered from the Applicant invokes sections of NDPS Act, *prima facie* I am not satisfied that the Applicant has not committed the said offence as alleged. In this view of the matter, the Application is rejected.

11. Since the prosecution intends to examine only eight witnesses, the Trial Court is requested to expedite the trial.

[DR. NEELA GOKHALE, J]