

Nikita

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

BAIL APPLICATION NO.5359 OF 2024

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Wasim Rafique Shaikh

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Akshay Bankapur for the Applicant.

Ms. M. H. Mhatre, APP for the State.

Mr. Sachin Chaudhari, API, ANC, Crime Branch Nashik
City.**CORAM : ASHWIN D. BHOBE, J.****DATED : 24th JULY, 2025****P.C.:**

1. Heard Mr. Akshay Bankapur, learned Advocate for the Applicant and Ms. M. H. Mhatre, learned APP for the State.
2. Applicant (Accused No.1) in C. R. No.268 of 2023 registered with Indira Nagar Police Station, Nashik, for the offences punishable under Sections 8(c), 20(b), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, is before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, seeking regular bail. Said crime is registered as Special Case (NDPS) No.88 of 2024 and is pending before the Court of the Additional Sessions Judge, Nashik.
3. There are 12 Accused in the crime.

4. Applicant was arrested on 06.10.2023, since then Applicant is in jail. Bail Application filed by the Applicant at Exhibit-39 in the Special Case (NDPS) No.88 of 2024 was rejected by the Additional Sessions Judge, Nashik by its order dated 10.12.2024.
5. Case of the prosecution is that on 05.10.2023, at Sadik Nagar, Wadala Gaon, near a ground behind Mhada building inside the tin shed, the Police Officer i.e. informant and other staff arrested Applicant and Nasrin Imtiyaz Shaikh (Accused No.2). Police found Ganja (1.288 kg) and Mephedrone (54.5 gm) found from the said Accused. Said contraband was valued at Rs.1,89,260/-.
6. Mr. Akshay Bankapur, learned Advocate for the Applicant submits that Mephedrone (54.5 gm) was found from possession of Accused No.2. He submits that the Ganja (1.288 kg) was found from the tin shed. He submits that there is no material to connect the Applicant to the said tin shed. He submits that the tin shed was accessible to any person. He submits that even if the Ganja is connected to the Applicant, then in such an event, the same is a non-commercial quantity.
7. Ms. M. H. Mhatre, learned APP for the State submits that pursuant to the information, Ganja and Mephedrone were found in the raid. She submits that though, the Mephedrone was seized from the person of Accused No.2, however seizure of Ganja can be connected to the Applicant. She submits that as per the CDR the Applicant is seen to be in constant communication with the Accused No.2. She submits that the tin shed from which the

contraband was seized, was erected on Government land, by making encroachment, as such, there is no material in respect of the ownership of the said tin shed.

8. I have perused the record with the able assistance of learned Advocates for the parties.

9. Mephedrone was seized from the person of Accused No.2. Mr. Akshay Bankapur, learned Advocate for the Applicant would be justified in his submission that there is no material to connect the seizure of Mephedrone to the Applicant.

10. Charge-sheet does not indicate any material to suggest recovery of incriminating material from or at the instance of the Applicant. Similarly, no material is available on record to connect the Applicant to shed from where the contraband Ganja was seized.

11. Ms. M. H. Mhatre, strenuously contended that the Applicant can be connected with the contraband Ganja seized from the tin shed. Ganja seized from the tin shed is not in commercial quantity. She submitted that during the course of investigation, the investigation agency obtained the call details record of the Applicant, which revealed frequent and repetitive calls between the Applicant and Accused No.2. On the basis of the same she submitted that the said material connects the Applicant to the Accused No.2. In response to the said submission, Mr. Akshay Bankapur, submits that except for the call details there is no material to connect the Applicant with the Accused No.2. He relied on the decision of Gujarat High Court in case of Yash Jayeshbhai

Champaklal Shah Vs. State of Gujarat¹ and emphasized on the observations of the Court in paragraph No.5, which reads as follows:

“5. Having heard learned Advocates for the appearing parties, it emerges on record that the applicant was not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused. However, screenshot of one of the whatsapp chat in between the co-accused shown to the Court, there is hardly anything which connects the applicant with the present offence or even asserting that he ordered for the same which were to be delivered by the accused found in possession of contraband. In absence of any other material, which is still to be retrieved from the devices of the mobile phone and information thereon which is still awaited, as considered by the Supreme Court in the case of Bharat Chaudhary (Supra) said material cannot be considered to be a sufficient material to establish any live link with the co-accused who were found in the possession of contraband.

(Emphasis added)”

12. In the case of Bharat Chaudhary vs. Union of India², the Hon’ble Supreme Court has observed that only sending of Whatsapp messages which have later downloaded from the cell phone and devices seized from the Accused cannot be treated as sufficient material to establish a live link between the Accused persons.

13. Contraband Ganja seized from the tin shed weights 1.288 kg. Rigorous of Section 37 of Narcotic Drugs and Psychotropic

¹ 2022 SCC Online Guj 271
²(2021) 20 SCC 50

Substances Act, 1985 would therefore not apply.

14. *Prima facie*, there is no material on record to support the prosecution case against the Applicant. Applicant is therefore entitled to bail.

15. Accused Nos. 3 to 6 are released on bail by this Court (orders at page Nos. 197 to 247 of the paper book).

16. In view of the above, the present Bail Application is allowed, on the following conditions:

a) Applicant be released on bail in connection with C.R. No.268 of 2023 registered with the Indira Nagar Police Station, Nashik on his furnishing P.R. bond of Rs.1,00,000/- with one or two local solvent sureties in the like amount to the satisfaction of Additional Sessions Judge, Nashik.

(b) On being released from jail, Applicant shall within three days, furnish his cell phone number and residential address to the Investigating Officer, Indira Nagar Police Station, Nashik and shall keep the same updated, in case of any change thereto.

(c) Applicant shall report to the Indira Nagar Police Station, Nashik once every week, on every Saturday between 10:00 a.m. and 1:00 p.m. till the conclusion of the trial in Special Case (NDPS) No.88 of 2024.

(d) Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person

from disclosing the facts to the Court or to any Police personnel.

(e) Applicant shall not tamper with the prosecution evidence and shall not contact or influence any witness in any manner.

(f) Applicant shall attend the trial of Special Case (NDPS) No.88 of 2024 on each and every date, unless exempted.

(g) Applicant upon his release within three days thereof, shall surrender his passport, if any, to the Investigating Officer, Indira Nagar Police Station, Nashik.

17. Bail Applicant No.5359 of 2024 is allowed in the above said terms.

(ASHWIN D. BHOBE. J.)