

Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 5373 OF 2024

Shaban Ahmad Hussain Alam Shah ...Applicant
Versus
State of Maharashtra ...Respondent

Ms Ashwini Achari, *with Mr Taraq Sayed, for the Applicant.*
Mr Yogesh Y Dabke, *APP for the Respondent-State.*
Mr M J Tayade, *PSI attached to Tulinj Police Station, Mira Bhayander Vasai Virar, present.*

CORAM Dr. Neela Gokhale, J.
DATED: 23rd September 2025

PC:-

1. The Applicant seeks his release on bail in connection with FIR No.I-329 of 2024 dated 21st April 2024 registered with the Tulinj Police Station, Mira-Bhayander, Vasai-Virar for the offences punishable under Sections 8(c) and 21(c) of the Narcotic Drugs & Psychotropic Substances ('NDPS') Act, 1985.
2. The case of the prosecution is that while on patrolling duty, a police hawaldar got specific information that one

person opposite Jay Ambe Apartment, near Public Road, Pragati Nagar, Hightension Road was selling contraband to the customers. Upon reaching the said location, the Police intercepted the Applicant and officers informed the same to the Senior Inspector of Police, arranging for two persons to act as panch witnesses.

3. According to the prosecution, 53.69 grams of mephedrone ('MD') was found in possession of the Applicant. The said contraband was found in his pocket and it was kept in 4 plastic pouches. Accordingly, FIR came to be registered.

4. The Applicant was arrested on 21st April 2024. He made 2 successive bail applications before the Trial Court, which were rejected by orders dated 18th November 2024 and 10th December 2024, respectively. Hence, the Applicant is before this Court in the present bail application.

5. Ms. Ashwini Achari, learned counsel appearing for the Applicant, has two points of argument, *firstly*, the compliance

under Section 42(1) of the NDPS Act has not been made as the information was not noted down by the concerned officials and *secondly*, compliance under Section 50 of the NDPS Act is also not made as the Applicant was not given an opportunity to understand that he had an option to be searched before the Magistrate. He was not apprised of his right under Section 50 of the NDPS Act. The note informing the Applicant in that regard, is not signed by two panchas as per the requirement of law. Thus, she says that in view of non-compliance of Sections 42(1) and 50 of the NDPS Act, the Applicant be released on bail. Learned counsel appearing for the Applicant has also relied upon a decision of this Court in the case of *Eze John v. Union of India & Anr.*¹

6. Per contra, Mr Yogesh Dabke, learned APP, appearing for the State, resists the bail application. Referring to the arguments of Ms Achari pertaining to Section 42(1) of the NDPS Act, Mr. Dabke submits that information was not taken down in writing because the search panchanama was signed

¹ Bail Application No.1754 of 2023 dtd. 4th April 2024

by the Senior Police Inspector himself and hence, it was not deemed necessary to record the information in writing. He however, concedes that the compliance with Section 50 of NDPS Act was perhaps left wanting. *Albeit* he says that Section 50 of the NDPS Act itself does not provide for the procedure to apprise the Applicant-Accused of his rights in writing in presence of two panchas, who are also to sign the said letter. He further submits that contraband seized from the person of the Applicant is of commercial quantity. Hence, he strongly resists grant of bail to the Applicant.

7. I have heard the counsel appearing for the respective parties and perused the record with their assistance.

8. As far as the first contention of Ms. Achari in respect of non-compliance of Section 42(1) of the NDPS Act is concerned, presence of Senior Inspector of Police by itself will not do away with the requirement of compliance of the said provision. Hence, there *prima facie* appears to be non-compliance of Section 42(1) of the NDPS Act. Section 50 of

the NDPS Act also provides for conditions under which search of a person shall be conducted. Undoubtedly, the Section itself does not provide for the Police to apprise the Applicant/Accused of his right of written requisition in presence of panchas and signed by the said panchas. In fact, the decision of this Court in ***Eze John (Supra)*** while dealing with the interpretation of the said provision, has held in paragraph 13 as under:

“13. The alleged non-compliance of the provisions contained in Section 50 of the Act, however, deserves careful consideration. By a catena of decisions, it is firmly settled that the requirements of Section 50 of the Act are mandatory and the Officer conducting the search is enjoined to scrupulously comply with the provisions contained in Section 50 of the Act. If the search of the person is to be carried out, it is imperative for the Officer conducting the search to apprise the person intended to be searched of his right to be searched before the nearest Magistrate or Gazetted Officer. Such right would become illusory if the suspect is not clearly apprised of the said right. Therefore, it is obligatory on the part of the officer effecting the search to apprise the suspect of such a right to be searched before the Magistrate or Gazetted Officer.”

9. Be that as it may, the quantity of the contraband allegedly found in possession of the Applicant-Accused is 53.69 gms., as per the case of the prosecution itself. The non-commercial quantity of MD is 50 gms. However, there does seem to be some discrepancy in the weight of the contraband recovered since, the same was contained in plastic pouches, the weight of which was considered while arriving at the total weight of the contraband. The said quantity is non-commercial and hence, the rigors of Section 37 of the NDPS Act will not apply.

10. The Applicant has suffered incarceration from April 2024, i.e., for a period of 1 year and 5 months, till date. Charges are also not framed as yet. It seems that the trial may not conclude within foreseeable future. There are no antecedents of the Applicant under the NDPS Act. The Applicant is a permanent resident of Nallasopara, Vasai and does not appear to be at risk of flight.

11. In view of the foregoing discussion, I am of the view that this is a fit case for grant of bail and it is ordered as under:

ORDER

- i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;
- ii) The Applicant shall attend the Tulinj Police Station, Mira-Bhayander, Vasai-Virar on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- iii) The Applicant shall attend the Trial Court concerned on each and every date unless specifically exempted by the orders of the Trial Court concerned;
- iv) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station;

v) The Applicant shall not leave India, without the permission of the trial Court;

vi) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vii) The Applicant shall inform his latest place of residence and mobile number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

viii) The Applicant to co-operate with the conduct of the trial;

ix) Any infraction of the aforesaid conditions shall entail cancellation of bail.

12. Application is allowed in the above terms and is accordingly disposed of.

13. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(Dr. Neela Gokhale, J)

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