

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.5463 OF 2024**

Fiddiyan Munaf Shaikh

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Sherali S.Khan, *for the applicant.*

Ms. Anamika Malhotra, *APP for the Respondent - State.*

PSI - Madhav M. Bhise, Sakinaka Police Station, present.

CORAM DR. NEELA GOKHALE, J.
DATED: 23RD SEPTEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.216 of 2024 dated 24.02.2024 registered with the Sakinaka Police Station, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS**' Act).

2. As per the prosecution case, in all there are 5 accused persons involved in the present case. Present

Applicant is arraigned as Accused No.4. Accused No.1 was apprehended and during his interrogation he revealed the name of one Sohail Ajar Baig i.e. Accused No.2 in the case, who in turn stated that he was purchasing the contraband from Accused No.4 i.e. the Applicant herein. Accordingly, the present Applicant was also apprehended. He gave a disclosure statement and at his behest, the officials recovered 25 grams of contraband in a room inhabited by him.

3. Mr.Sherali Khan, learned counsel for the Applicant states that Applicant was arrested in March, 2024 and till date even the charges are not framed by the Trial Court. 25 grams of Mephedrone (MD) was recovered from the Applicant, which is a non-commercial quantity. Mr.Khan further states that apart from the disclosure statement made by the Applicant, there is no other evidence linking him with the Accused No.1 in the said case. Thus, he submits that there is no conspiracy and *prima facie* it cannot be said that an

offence is made out. He thus, seeks Applicant's enlargement on bail.

4. Per contra, Ms. Anamika Malhotra, learned APP representing the State, submits that section 29 of the NDPS Act is invoked and there is a conspiracy between all the five accused in the commission of said offence. She states that 18 months' incarceration cannot be termed as long incarceration especially in cases involving NDPS Act. She submits that even though only 25 grams have been recovered from the drawer in the house inhabited by the Applicant, the entire conspiracy indicates that there was 575 grams of Mephedrone (MD) recovered in the present case and hence, rigours of Section 37 would apply. It cannot be said that the Applicant is not connected in the present crime. She thus, resists the grant of bail to the Applicant.

5. I have heard the counsel and perused the papers with their assistance. The Panchanama dated 31st March, 2024 clearly indicates that 25 grams of Mephedrone (MD) was

recovered at the behest of the Applicant. Admittedly, there were two persons who were staying in the said room and had access to the said drawer from which the said contraband was recovered. It cannot be said that the Applicant alone was concerned with said 25 grams of Mephedrone, at this stage.

6. The gist of the charge-sheet also shows that the main Accused namely Mujahid Murtuja Khan i.e. Accused No.1 was apprehended with 500 grams of Mephedrone. He made a statement that he was purchasing the contraband from Sohail Ajgar Baig namely Accused No.2 and this Sohail was also purchasing the contraband from the Applicant. Although at first blush there appears to be a link between the main accused and the present Applicant, *prima facie* a conspiracy cannot be established from the gist of the charge-sheet.

7. Moreover, an opinion may not be formed at this stage as to whether the Applicant is guilty of the conspiracy or not. Admittedly, the Applicant has spent as many as 18

months in custody. The Supreme Court, in a series of judgments held that, prolonged incarceration generally militates against most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation the conditional liberty must override the statutory embargo created under Section 37(1)(d)(ii) of the NDPS Act. Admittedly, the Applicant does not have any antecedents. In that view of the matter, I am inclined to grant bail to the Applicant only on the principle of long incarceration. Hence, the following order:-

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 Trial Court concerned on each and every date unless exempted by the orders of the Trial Court concerned; Applicant

shall also attend the Sakinaka Police Station once in a month between 11:00 a.m. to 02:00 p.m.;

iii) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station;

iv) The Applicant shall not leave India, without the permission of the Trial Court;

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

vi) The Applicant shall inform his latest place of residence and mobile contact 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;

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

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

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

9. 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)