

Shivgan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 64 OF 2025**

Julfikar Fayyaz Shaikh

...Applicant

Versus

State of Maharashtra

...Respondent

Mr Sherali S Khan, for the Applicant.

Ms Manisha R Tidke, APP for the Respondent-State.

Mr Santosh Salunkhe, PI attached to ANC Worli Unit, Present.

CORAM DR. NEELA GOKHALE, J.

DATED: 01ST OCTOBER 2025

PC:-

1. The Applicant seeks his release on bail in connection with the FIR No.100 of 2023 dated 10th December 2023 registered with the ANC Worli Unit, Bombay for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. The case of the prosecution, in brief, is that the officials on patrolling duty found the Applicant along with co-accused at Ghatkopar Railway Station, behaving in a suspicious

manner and hence, after complying with the provisions under the NDPS Act, took their search. Two plastic bags were recovered from them. From the co-accused namely, Samir Rajesh Basopia, 70 gms of Methamphetamine was recovered and 80 gms of the same contraband was recovered from the present Applicant. Accordingly, FIR was registered by the concerned Authorities. The Applicant made a bail application before the Special NDPS Court, however, by an order dated 23rd October 2024, the bail application was rejected. Hence, he has filed the present Application for the reliefs as prayed.

3. At the very outset, Mr. Sherali Khan, learned counsel appearing for the Applicant, submits that the Applicant was arrested on 10th December 2023 and till date, charges are not framed. He also submits that necessary compliance under Section 50 of the NDPS Act is not satisfied and hence, the arrest of the Applicant is illegal. Mr. Khan further submits that originally the case of the prosecution was that the contraband namely, Mephedrone was found in plastic bags however, C.A.

Report clearly indicates that the same was not Mephedrone but, was Methamphetamine. He submits that the entire case of the prosecution is misconceived. He thus, prays that the Applicant be released on bail.

4. Per contra, Ms. Manisha Tidke, learned APP representing the State, on instructions, submits that the next date of hearing before the Trial Court is 3rd October 2025 and the charges are likely to be framed on that date. She again, on instructions, states that the prosecution intends to examine only 10 witnesses. She further submits that since *prima facie* case is made out because 80 gms of contraband was recovered from the Applicant, which is a commercial quantity, rigors of Section 37 of the NDPS Act will apply. In these circumstances, bail application be rejected.

5. I have heard both the counsel and perused the record with their assistance.

6. Admittedly, the Applicant is in custody for as many as 1 year and 9 months. The Applicant does not have criminal antecedents. It does *prima facie* appear that commercial quantity of 80 gms of Methamphetamine is recovered from the Applicant, thus, criteria of Section 37 of the NDPS Act is not met. However, admittedly, the Applicant is incarcerated for 1 year and 9 months and even charges are not yet framed. In view of the observation of the Apex Court in the matter of ***Ankur Chaudhary v. State of Madhya Pradesh***¹ that failure to conclude the trial within a reasonable time resulting in prolonged incarceration, militates against the fundamental right guaranteed Article 21 of the Constitution of India and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be observed. In the facts and circumstances of the present case, I am inclined to grant bail to the present Applicant. Hence, the following order:

1 2024 SCC OnLine SC 2730

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;
- iii) Applicant shall also attend the concerned Police Station once in a month on the first Saturday of every month between 11:00 a.m. to 02:00 p.m. till the charges are framed;
- 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.

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

8. 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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signed by
SHAMBHAVI
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SHIVGAN
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