

AGK

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

BAIL APPLICATION NO.79 OF 2025

Salman Nadar Khan	... Applicant
V/s.	
The Senior Inspector of Police & Anr.	... Respondents

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Mr. Swapnil Wagh with Ms. Vinita Dandekar, Mr. Prathmesh Bhosale and Mr. Somvrat Kurlekar for the applicant.

Ms. Mahalaxmi Ganapathy, APP for State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 10, 2025

P.C.:

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973, preferred by the applicant seeking his enlargement on bail in connection with NDPS Special Case No. 1472 of 2023, arising out of C.R. No. 24 of 2023 registered with ANC Worli Unit Police Station, Mumbai, for the offences punishable under Sections 8(c), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”).

2. The factual substratum, as borne out from the charge-sheet, reveals that on the intervening night of 17th January 2023, at approximately 11:30 p.m., officers of the Anti-Narcotics Cell, Worli

Unit, while on routine patrol duty near the BKC fire station, intercepted three individuals who were found loitering in a suspicious manner. Upon their detention and search, allegedly conducted in the presence of panch witnesses, commercial quantity of Mephedrone (MD) was recovered. Consequent investigation led the police to the applicant's premises, from where 4.749 kilograms of MD—also falling within the commercial quantity threshold—was allegedly recovered. The prosecution imputes to the applicant not only the conscious possession of the recovered contraband but also his active involvement in the supply chain of the co-accused and participation in a larger drug trafficking network. The applicant was arrested on 10th March 2023 and remains in judicial custody since.

3. The application for bail preferred before the learned Special Judge, NDPS Court, stood rejected, chiefly on the ground that the recovery was of commercial quantity and thus, the statutory fetters under Section 37 of the NDPS Act stood attracted.

4. Learned counsel appearing for the applicant, in support of the application, has raised multiple grounds which merit individual scrutiny. It is firstly contended that there is non-compliance with Section 42(2) of the NDPS Act, which casts a mandatory obligation on the officer concerned to reduce in writing any information received about commission of offence and to forward the same to superior officials forthwith. It is submitted that such procedural lapse vitiates the entire investigation at its foundation.

5. The learned counsel further submitted that a serious discrepancy arises on perusal of the panchanamas, wherein the recovery from the co-accused and the recovery attributed to the present applicant both bear identical or overlapping timelines, thereby throwing considerable doubt on the credibility of the seizure procedure and the sanctity of documentation.

6. It is also argued that though 4.749 kg of MD is shown as recovered from the applicant's residence, the said recovery appears to have been duplicated or reflected in another co-accused's prosecution narrative, suggesting inconsistency and possible fabrication in the chain of custody.

7. A further submission is that the forensic confirmation of the nature of the contraband was either delayed or absent at the relevant point in time, and in the absence of confirmatory analysis, the invocation of Sections 8(c) and 22(c) of the NDPS Act at this stage is premature.

8. It is also urged that if the recovery is being shown as a chance recovery, then the issuance of notice under Section 50 of the NDPS Act becomes superfluous, as Section 50 applies primarily to personal searches and not to searches of premises, unless such search involves the person of the accused.

9. Learned counsel has placed reliance on an order passed in Bail Application No. 4184 of 2024 dated 6th May 2025, wherein, on similar factual circumstances involving alleged discrepancies in seizure records, bail was granted.

10. It is further contended that mentioning of the C.R. number on the seized packet of 110 grams of MD even before the formal registration of FIR raises a fundamental doubt on the sequence of events. It is urged that such premature recording of the case number on a sealed exhibit without registration of crime smacks of reverse engineering of documentation and is symptomatic of procedural irregularities that cannot be brushed aside as mere technical lapses.

11. The applicant has remained in custody since 10th March 2023, and there is no indication that the trial is likely to commence in the near future. Learned counsel submits that continued incarceration, in the absence of trial, amounts to punitive detention, and infringes upon the applicant's fundamental right under Article 21 of the Constitution of India, which guarantees personal liberty and speedy trial.

12. Per contra, the learned APP appearing for the State has opposed the bail application. It is submitted that the recovery of commercial quantity of Mephedrone, from the premises to which the applicant had exclusive access, directly attracts the bar under Section 37(1)(b) of the NDPS Act.

13. It is submitted that the presumption under Section 54 of the NDPS Act becomes operative in the facts of this case. The recovery was made from a premises the key to which was retrieved at the instance of the applicant, from a location known only to him, thereby establishing conscious possession.

14. The learned APP has pointed out that the chemical analysis report forms part of the charge-sheet, which confirms that the seized substance is Mephedrone, a psychotropic substance notified under the NDPS Act, and there is no ambiguity about the classification of the contraband.

15. It is further submitted that the digital and financial trail obtained during the investigation indicates monetary transactions between the applicant and co-accused, which corroborates the applicant's alleged involvement in a wider network of trafficking and supply.

16. Upon giving thoughtful consideration to the rival submissions and perusal of the record, this Court is mindful that Section 37 of the NDPS Act incorporates a non obstante clause, and mandates that no person accused of an offence involving commercial quantity shall be released on bail unless:

- (i) the Public Prosecutor is given an opportunity to oppose the application; and
- (ii) the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

17. These conditions are cumulative, and their strict compliance is mandatory. This position has been affirmed by the Supreme Court in *Union of India v. Niyazuddin SK*, (2018) 13 SCC 738.

18. As regards the applicant's contention about procedural lapses under Section 42(2) of the NDPS Act, or the alleged inconsistency in the timeline of seizure operations, the Court is conscious that

such issues are not minor in nature. Compliance with the procedural safeguards under Section 42 is mandatory, as held by the Supreme Court in *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539, wherein it was reiterated that non-compliance with Section 42 may, in appropriate cases, vitiate the trial. However, the effect of such non-compliance has to be assessed on the facts of each case and generally during the course of trial upon full appreciation of evidence.

19. In the present case, it is not possible for this Court to arrive at a definitive conclusion regarding the impact of such alleged procedural irregularities at this pre-trial stage, particularly when the charge-sheet has already been filed and the matter is yet to proceed to evidence. It is well-settled that bail under the NDPS Act, especially when commercial quantity is involved, is governed by the rigours of Section 37(1)(b), which places two specific conditions—firstly, that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence, and secondly, that he is not likely to commit any offence while on bail.

20. Mere plea regarding procedural lapses, without anything more to prima facie indicate falsity or fabrication in the recovery or serious doubts on the prosecution's case, cannot by itself satisfy the strict requirements under Section 37(1)(b). The standard of satisfaction under Section 37 is higher than that under normal bail applications and the presumption is against the grant of bail unless both the twin conditions are met.

21. Therefore, though the applicant is at liberty to raise all such contentions regarding procedural irregularities before the learned trial court at the appropriate stage, this Court, at this juncture, does not find the said contentions sufficient to record the satisfaction contemplated under Section 37(1)(b) of the NDPS Act for granting bail.

22. The fact that the applicant himself produced the key to the premises, wherefrom the contraband was ultimately recovered, coupled with the forensic report confirming that the substance is Mephedrone, strengthens the prima facie conclusion that the applicant was in conscious possession of the said contraband. The expression "conscious possession" implies a state of mind where the person is aware of the presence and nature of the contraband in his control, either physically or through access. The conduct of the applicant in voluntarily producing the key leads to an inference that he had knowledge about the contents stored inside the premises.

23. It is well settled that conscious possession does not always require actual physical custody. Possession under the NDPS Act must be conscious and intelligent, which can be established by circumstantial evidence including the control over the premises where contraband is found. In the present case, the conduct of the applicant shows such control and awareness.

24. As regards the argument raised on behalf of the applicant that the recovery has been duplicated or forms part of another accused's seizure record, such contention involves factual

controversy which cannot be gone into at the stage of deciding the bail application. Whether the same contraband has been shown as recovered from multiple accused or whether there is overlapping in documentation, are matters which require scrutiny of evidence during trial.

25. At this pre-trial stage, such disputes on factual accuracy or inconsistencies are not determinative for the purpose of bail under the stringent provisions of the NDPS Act. Unless both the conditions under Section 37(1)(b)(i) and (ii) are satisfied—that the Court has reasonable grounds to believe that the accused is not guilty and is not likely to commit any offence while on bail—no bail can be granted in respect of commercial quantity.

26. In the light of the applicant's role in giving access to the premises, and the forensic confirmation of contraband, this Court is unable to record a satisfaction that the applicant is not guilty of the offence. Therefore, at this stage, the rigours of Section 37 bar the grant of bail. The applicant, however, shall be at liberty to raise all these issues at the stage of trial.

27. The submission made on behalf of the applicant regarding alleged procedural irregularity in affixing the Crime Register (C.R.) number on the sealed packet, though not insignificant, cannot be ignored altogether. In criminal law, especially in cases under the NDPS Act, procedural compliance is crucial to ensure the integrity of investigation. However, such alleged irregularity by itself, in the absence of any concrete material showing tampering or manipulation of the sealed packet, cannot be treated as sufficient

to demolish the prosecution's case at this preliminary stage.

28. It is important to note that under Section 54 of the NDPS Act, once the prosecution establishes possession of contraband, the burden shifts on the accused to explain such possession. This statutory presumption, as upheld by the Supreme Court in *Noor Aga v. State of Punjab*, (2008) 16 SCC 417, is a reverse burden provision and operates as long as the prosecution places foundational facts on record—namely, recovery, seizure, chemical analysis, and prima facie involvement of the accused.

29. In the present case, the material on record shows that the contraband substance was recovered and seized in the presence of panch witnesses and properly sealed. The forensic science laboratory report confirms the seized substance to be a prohibited drug under the NDPS Act. The sealing process and chain of custody also appear to have been maintained, and no material has been shown to indicate any actual tampering or break in the seal.

30. In such circumstances, the mere absence or error in mentioning the C.R. number on the sealed packet, in isolation, cannot be construed as sufficient to dislodge the statutory presumption under Section 54. At the stage of bail, the Court is not expected to conduct a mini-trial. The question whether the procedural irregularity has resulted in prejudice to the accused or has vitiated the evidentiary value of seizure, is a matter best considered at the time of trial after full appreciation of evidence.

31. Hence, in the absence of any cogent or credible material placed on record to rebut the foundational facts of recovery and

possession, this Court finds no reason to depart from the bar under Section 37 of the NDPS Act. The applicant shall be at liberty to raise all such contentions before the trial court.

32. The reliance placed by the applicant on the order in Bail Application No. 4184 of 2024 is distinguishable on facts, as the present case involves direct recovery of commercial quantity from the premises accessible to and within knowledge of the applicant. The principle of parity, though relevant, cannot be applied mechanically without assessing the factual matrix in each case.

33. In view of the foregoing analysis, and upon careful balancing of the statutory restrictions under the NDPS Act with the constitutional right to personal liberty, this Court is not satisfied that the twin conditions prescribed under Section 37(1)(b) stand fulfilled so as to justify grant of bail to the applicant at this stage.

34. Hence, the application is devoid of merit and stands rejected, however, it is clarified that observations made herein are prima facie in nature and confined to the adjudication of the present bail application only.

35. In view of the above discussion, and considering the balance between constitutional rights under Article 21 and statutory restrictions, this Court is of the opinion that direction to the trial court for time-bound disposal would adequately address the applicant's grievance without bypassing the embargo of Section 37 of the NDPS Act.

36. Accordingly, while rejecting the present application, the Sessions Court, Mumbai, is directed to take up NDPS Special Case

No. 1472 of 2023 for framing of charge within a period of eight weeks, and to conclude the trial as expeditiously as possible, preferably within a period of one year from the date of framing of charge, unless there are legal impediments.

37. Liberty is granted to the applicant to revive his prayer for bail in the event the trial does not commence within the above timeline or if any further delay is occasioned for reasons not attributable to the applicant.

(AMIT BORKAR, J.)