

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.127 OF 2025

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Imran Aslam Pathan

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Anil Lalla a/w. Ms. Rithika Yerra and Ms. Ankita Rathod i/b. a/w. Lalla & Lalla, for the Applicant.

Mr. A.A. Naik, APP, for the Respondent/State.

Mr. Sandip Rahane, PSI, DCB CID, Unit 6, Chembur present.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 11, 2025

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No.172 of 2023 registered with Navghar Police Station (DCB CID Unit VI, Mumbai, CR No.56 of 2023), for the offences punishable under Sections 420, 354, 468, 471 of the Indian Penal Code and Sections 20, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"), has preferred this application to enlarge him on bail.
3. This is the second application for bail. The first Bail Application No. 1100 of 2024 was rejected by this Court by an order dated 25th June, 2024.
4. Mr. Lalla, the learned counsel for the applicant, submits that subsequent to the rejection of the said application, this Court had granted bail to the co-accused as there was a significant change in

the circumstances in as much as the contraband, allegedly found in the possession of the applicant and the co-accused, upon analysis by the Forensic Science Laboratory, turned out to be Ketamine. Thereupon, this Court was persuaded to release the co-accused Mohd. Ajmal Shaikh, Sarfaraz Khan and Priyanka Karkaur, on bail by orders dated 20th December, 2024 and 30th January, 2025. Only, 20 gms. of Ketamine was allegedly recovered from the possession of the applicant. Therefore, the applicant is entitled to the same dispensation as has been extended to the co-accused, who have been released on bail.

5. Mr. Naik, the learned APP, fairly submitted that the principle of parity would apply.

6. While releasing the co-accused Mohd. Ajmal Shaikh and Sarfaraz Khan, by an order dated 20th December, 2024, this Court has specifically noted that the bail application of the applicant and Kaynaat Khan (A10) were rejected by this Court on the premise that the substance found in possession of the accused was primarily MD. The observation in the paragraph Nos. 10 to 13 of the said order are material and hence extracted below.

10] This Court must confess that when the bail applications of Kaynaat Khan (A10) and Imran Pathan (A4) were rejected, the prosecution proceeded on the premise that the substance found in possession of the accused was primarily mephedrone and charas. Thus, in the order dated 25th June, 2024 in the case of Imran Pathan (A4) in BA/1100/2024, the prayer for bail was negatived observing inter alia as under:

“13. As noted above, the material on record indicates that varying quantity of contraband substance were recovered from each of the accused, who were apprehended. Sahil (A1) was found in possession of 62 gms, Mohd. Ajmal Kasam Shaikh, 54 gms of MD, and rest of the accused were also found in possession of contraband substance, though it did not exceed the commercial quantity. The prosecution alleges, over 350 gms of MD/ketamine/charas was recovered from the applicant and the co-accused.

14. In the aforesaid scenario, I find substance in the submission of the learned APP that the entirety of the circumstances is required to be looked into and not only the quantity of the contraband found in possession of the applicant. There was specific information. Cars were intercepted based on such specific information. The applicant was at the wheel of the car. The applicant and co-accused were all found travelling together. In all, 350 gms and above contraband substance was recovered from the applicant and co-accused. In such circumstance, an inference of the applicant being privy to the crime can be legitimately drawn.”

11. The situation which now obtains is that, apart from Shamsuddin Shah (A3), from whose possession 31 gm. Charas was allegedly recovered, from all the other occupants of both the vehicles Ketamine was allegedly recovered. As noted above, the recovery of 6.16 gms. Mephedrone from Sayed Shaikh (A11) was subsequent and pursuant to the disclosure made by Kaynaat Khan (A10).

12. In my considered view, the situation which has now emerged is of material significance. Under Entry 238E of the Notification, the small quantity of Ketamine is 10 gm. And commercial quantity is 500 gms. The small quantity of charas is 100 gms and commercial quantity is 1 kg. Resultantly, even if the cumulative quantity of the contraband substance found in possession of all the occupants of both vehicles, discounting the submissions on behalf of the applicants that there is no material to establish the nexus between the occupants of both the vehicles and to rope them in as confederates in the conspiracy, the quantity of contraband substance would fall within the range of intermediate quantity.

13. In this view of the matter, I find substance in the submissions on behalf of the applicants that prima facie the interdict contained in Section 37 of the NDPS Act may not operate. In view of the aforesaid fact-situation, I do not deem it necessary to delve into other submissions canvassed on behalf of the applicants regarding the non-compliance of the statutory provisions. Suffice to note that there were no financial transactions between the applicants and co-accused, especially Sahil Khan (A1), the alleged kingpin, and Kaynaat Khan (A10).

7. The aforesaid reasons equally apply to the claim of the applicant for bail.

8. The situation which thus obtains is that the applicant is found in possession of 20 gm of Ketamine. The interdict contained in section 37 of the NDPS Act does not come into play. Apart from the recovery of the contraband substance, there is no material to indicate that the applicant was involved with the other co-accused in the form of either financial transactions or the CDR. The applicant does not have antecedents. Further detention of the applicant is, thus, unwarranted.

9. Mr. Lalla, the learned counsel for the applicant further submits that the applicant has no antecedents.

10. Mr. Naik, learned APP, on instructions of the officer, who is present in Court, concurs with the submission of Mr. Lalla.

11. I am, therefore, inclined to allow the application.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Imran Aslam Pathan be released on bail in C.R. No. 172 of 2023 registered with Navghar police station (DCB CID, Unit VI, Mumbai CR No. 56 of 2023) on furnishing a P.R. Bond of Rs.

1,00,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at the office of DCB CID, Unit VI, Mumbai on the first Monday of every alternate month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)