

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 199 OF 2025

Prashant Yallappa Patil

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Aruna S. Pai a/w N.M. Nadar for Applicant
- Mr. Sukanta A. Karmakar, APP for Respondent - State
- Mr. Sopan Bhagwat Wadkar, PSI, Pairavi Officer, Saki Naka Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 7, 2025

P. C.:

1. Heard Ms. Pai, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 1216/2023 registered with Sakinaka Police Station for offences punishable under Sections for the offences punishable under Sections 8(c) r/w 22(c) and Section 29 Narcotics and Psychotropic Substances Act, 1985 (for short "NDPS Act").

3. Applicant is arrested on 10.05.2024 and since then he has been in incarceration for a period of 10 months & 28 days. Applicant has no criminal antecedents.

4. On 05.03.2025 after hearing Ms. Pai, learned Advocate for Applicant, this Court passed the following order:-

"1. Heard Ms. Pai, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent.

2. The facts in the present case prima facie on the face of record appear to be gross. On 12.02.2025, I had specifically directed the learned APP to take appropriate instructions on the issue stated in the paragraph No.3 of the order. Today when the matter has reached for hearing learned APP persuades the Court to take up the matter on some other day since he has no instructions. That apart, Ms. Pai reveals some startling issues which cannot be lost sight of. She informs the Court that there are total 5 Accused arrested in the present crime and Accused Nos.2 and 3 have been released on bail.

3. In so far present Applicant is concerned he is arraigned as Accused No.4. She would submit that there is no conscious recovery of any alleged contraband from him neither he has been named by any of co-accused persons in the present crime. Reason for noting this down is because on the last date, Court had noted that Applicant is indicted solely on the statement of co-accused. She has pointed out indictment and subsequent arrest of Applicant is on basis of secret information received by prosecution which is appended at page No.32 of the Application.

4. When the said information is read, it is prima facie seen that some secret informer had informed the police authorities about the role of Applicant. However, the role of Applicant is not clear as to why he has been indicted in the present crime. If there is no any issue inter alia pertaining to any money trail leading to the present Applicant arraigned as Accused No.4, prosecution may point that out. According to Ms. Pai, Applicant has no nexus whatsoever with other co-accused arraigned in the present crime. Applicant is a B.Sc. Graduate and working in a Fertilizer Company in Pune and a married person as informed by her.

5. She would fairly point out that according to prosecution case, Accused No.5 – Hukmaram Bharmal Chaudhari in his Nivedan Panchanama at page No.182 of the Application has stated that he is hailing from Rajasthan and he is manufacturing the contraband in conjunction with present Applicant. That is the only reference to Applicant, but it is unrelated to the present crime in question and is a general statement. The prosecution shall take appropriate instructions on the above submissions and accordingly apprise the Court about the role of Applicant.

6. *Stand over to 12th March, 2025. To be placed under the caption 'First on Board'.*

5. Today in response to the submissions made by Ms. Pai, learned APP would draw my attention to page No. 208 - the statement of the Applicant which has been recorded by the NDPS Officer / prosecution on 13.05.2024. Learned APP would persuade me to consider the fact that in that statement, Applicant has disclosed the information, *inter alia*, pertaining to the other co-accused persons and those co-accused persons have been apprehended and alleged contraband has been recovered from them. That apart, he would persuade the Court to consider the fact that Applicant was also sharing his expertise with the other co-accused persons for setting up of the factory for manufacture of MD powder in Jodhpur, Rajasthan along with the said accused persons who were his friends. He would submit that, in view of the aforesaid circumstances, if the Applicant is released on bail, there exists a strong likelihood that he may re-establish his connections and resume the alleged illegal activities. Next he would draw my attention to page No. 394 of the Applicant which is the recovery panchanama of the mobile phone of the Applicant by the prosecution team. Perusal of the said panchnama *prima facie* shows that on the analysis of the phone calls made by the Applicant, it is stated therein that Applicant had made 192 WhatsApp calls and was in constant touch with other

co-accused persons between 28.03.2024 to 09.05.2024 and further 279 calls have been made between the Applicant and other co-accused persons and therefore learned APP would persuade me to believe and infer that Applicant is complicit in the present crime of trafficking the illegal contraband. He would therefore argue that present Application for bail be rejected.

6. I have heard learned Advocates at the bar and perused the material placed on record. *Prima facie* the case of prosecution as against the Applicant before me emanates on the basis of his apprehension and arrest on the basis of statement of co-accused persons who have disclosed his rule. That apart disclosure statement recorded by Applicant is made in enquiry under Section 67 of the NDPS Act to the prosecution officers. Applicant before me is a B.Sc. graduate and was working in a Fertilizer Company at the time of his arrest. It is *prima facie* seen that reference to Applicant in the said recorded statement is vague and unconnected to the recovery of the contraband in the present case from the said co-accused persons.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he

would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“37. Offences to be cognizable and non-bailable.:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

8. From the reading of Section 37 of the NDPS Act, it becomes clear that the legislature intends to deny bail to accused alleged to be in possession of commercial quantity of contraband in absence of court subscribing to a contrary view, however therefore if seen it does not rule out the facet of discretion of Court to grant bail. Furthermore the

Court must be satisfied that the accused is unlikely to re-offend. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. In such cases, if we look realistically the provisions of Section 37 leave limited room for a possibility of granting bail to the accused. However employing such limitation would create a dichotomy in the current scenario where one common grievance is made before this Court repeatedly in matter after matter. It is brought to the notice of the Court that trials are taking perpetuity to be concluded and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long incarceration, and is also equally aware of the conditions of our prisons. To give an example in the city of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates, as on date houses anywhere between 220 – 250 inmates. This situation is inhumane, but it also cannot be forgotten that addiction of drugs is also a serious issue qua the society at large, and therefore provisions such as Section

37 act as a deterrent to prospective wrongdoers. Such an incongruity leads us to answer the proposition: *“How can Courts find a balance between the two polarities?”*

9. In the case of *Vikramjit Singh Vs. Narcotics Control Bureau*¹ the Delhi High Court found no admissible evidence linking Applicant directly to the contraband. It noted that disclosure statement of the person from whose house the drugs were recovered did not implicate the Applicant and was thus inadmissible under law as such a confession is hit by Section 25 of Indian Evidence Act, 1872.

10. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*² held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

1 BA No. 4268 of 2024 decided on 14.01.2025

2 (2021) 4 SCC 1

11. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*³ the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

12. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*⁴ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

64. ***

65. ***

66. ***

3 2023 SCC OnLine 135

4 (2023) SCC OnLine Del 134

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon^{ble} Court in *State v. Navjot Sandhu @ Afsan Guru* Crl. A. No. 80/2003 wherein this Hon^{ble} Court, after placing reliance on *Pulukuri Kottaya and Ors v. The King-Emperor* 1946 SCC OnLine PC 49, and several other judgments of the Hon^{ble} Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.
2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.
3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.
4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.
5. Only such portion of the information as is distinctly connected with the said discovery is admissible.
6. The discovery of the fact must relate to the commission of some offence.”

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a “new fact” thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence.”

13. In the case of ***State Vs. Pallulabid Ahmad Arimutta***⁵, the Supreme Court held that CDR details of some of the accused or

5 SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Hence statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

14. In the case of *Bharat Chaudhary Vs. Union of India*⁶, the Supreme Court held that printouts of WhatsApp messages downloaded from the mobile phone or device seized cannot be treated as sufficient material to establish link between the accused persons under the NDPS Act at the stage of bail. It also held that statement of co-accused cannot be relied upon under Section 67 of NDPS Act.

15. In the case of *Mohd. Hussain Ahmed Shaikh @ Babool Bhai Vs. State of Maharashtra*⁷ this Court questioned the reliance on admissibility of WhatsApp messages only for indictment and custody and whether there was sufficient material to deprive liberty to the Applicant. Court placed reliance on the decision of the Supreme Court in the case of *Bharat Chaudhary (Supra)* and held that mere WhatsApp messages solely cannot be relied upon at the stage of bail to deprive personal liberty to the accused under-trial.

16. In view of the aforesaid *prima facie* observations and circumstances *qua* the Applicant before me referred to herein above and the above citations being applicable, Applicant can be released on

⁶ (2021) 20 SCC 50

⁷ Bail Application No. 2000 of 2023 decided on 09.05.2024

bail. Hence, Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

17. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

18. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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