

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.322 OF 2025**

Rais Babboo Mirza	...Applicant
<i>Versus</i>	
State of Maharashtra and Anr.	...Respondents

Ms. Kaushalya Negi Patil a/w Vaishali Rajkarne, Sagar C.
Parab and Abhishek Kasare, *for the Applicant.*
Ms. Poonam P. Bhosale, *APP for the Respondent - State.*
Mr. Saket R. Ketkar, *Spl. PP for the Respondent No.2 - DRI.*

CORAM DR. NEELA GOKHALE, J.
DATED: 10TH OCTOBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with Spl. NDPS Case No.1285 of 2023 registered with DRI, Mumbai Zonal Unit, Mumbai (F.NO.DRI/MZU/C/INT-23/2023), for the offenses punishable under Sections 21(c), 23(c), 27A, 28, 29, 30, 35, 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS'). In all, there are three accused persons involved in the present case.

2. The facts of the case, in brief, are that intelligence was received by the DRI, Mumbai, that one lady passenger namely Rukshanabanu Shabbir Shaikh, an Indian national, was traveling from Nairobi to Mumbai and was to land at around 01:30 hrs on 14th February, 2023, at Chhatrapati Shivaji Maharaj International Airport, Mumbai. The intelligence indicated that the said lady was carrying some narcotic substance. When she was apprehended nothing was recovered on her person. However, on a search of a black colored handbag, one blue colored handbag and two black colored trolley bags, contraband was recovered from the trolley bags. In all, total eight packets were recovered from the two trolley bags. A total of 11.94 Kgs of Heroin was thus, recovered from the said lady who is implicated in the C.R as Accused No.1. On her interrogation, she revealed that the Accused No.2 and the present Applicant were also involved in the said case. She revealed that she was asked to carry the said contraband, given to her by a person in Zimbabwe and she was to carry it to the Mumbai and hand it over to Accused

No.3. Thus, the implication of Accused No.3 was also made out and a file was opened against the three accused, resulting in a charge-sheet being filed in the said case.

3. The Applicant, made an Application for bail before the Special NDPS Court, however, by order dated 8th January, 2025, the said bail application was rejected. Hence, the Applicant has filed the present Application for the reliefs as prayed.

4. Ms.Kaushalya Negi Patil, learned counsel for the Applicant, submits that Accused No.2 is enlarged on bail and the present Applicant's role is on a better footing as compared to Accused No.2. She also submits that the entire case of the DRI is based on the statement of the co-accused. The said statement is under Section 67 of the NDPS Act, which is inadmissible. She further submits that there is no recovery from the Applicant; there are procedural transgressions in the conduct of the officials. She also submits that the Applicant is in custody from 15th February, 2023, and as such, has suffered incarceration of more than 2 and ½ years. Hence, she prays

that the Applicant be released on bail. She also relied on the decision of this Court in the matter of *Ravi Manoj Rai vs Union of India*¹ decided on 11th February 2025, wherein this Court held that statement of co-accused is inadmissible. She also placed reliance of the decisions relied on by this Court in the Ravi Manoj Rai's case namely *State vs Pallulabid Ahmad Arimutta*²; *Bharat Chaudhary vs Union of India*³ and *Mohd. Hussain Ahmed Shaikh @ Babool Bhai vs State of Maharashtra*⁴ mentioned in paragraph Nos. 22, 23 and 24 of the Ravi Rai's case, on the point of CDR, Whatsapp evidence, which are matters of trial and not for Bail.

5. Per contra, Mr.Saket Ketkar, learned Spl.PP representing the DRI, at the very outset, submits that although the bail application of the Accused No.2 was allowed by this Court, the Respondent No.2-Union of India has assailed said order before the Apex Court. He has tendered order dated 12th September, 2025, passed by the Supreme Court in Special

1 2025 SCC OnLine Bom 260
2 (2022) 12 SCC 633
3 (2021) 20 SCC 50
4 2024 SCC OnLine Bom 3961

Leave to Appeal (Cri) No.10451 of 2025, filed by Respondent No.2. The Supreme Court has issued notice to Accused No.2 and the matter is pending consideration before the Supreme Court. He further submits that there is a entire web of transactions recovered by the DRI implicating the present Applicant as well as the co-accused. He submits that there is material on record which clearly reveals that Accused No.2 and 3 were waiting at the Airport to receive Accused No.1. He has drawn my attention to the Affidavit-in-Reply, affirmed by one Mr. Kumar Ambrish, Deputy Director, Directorate of Revenue Intelligence (DRI), Mumbai Zone Unit (MZU). In the said Affidavit-in-Reply, it is specifically averred that the Applicant himself has disclosed that he had on earlier occasions arranged for bags containing contraband to be transported from foreign country to India by other passengers. He has also pointed to the direct involvement of the Applicant in the entire racket, by relying on the Call Data Record of the Applicant-Accused with the other co-accused. He has also pointed to the bank statements which indicate multiple

transactions between the parties. He submits that even the CDR's clearly indicate that the Accused were in contact of each other, especially, on the particular date of the incident. He thus, submits that there is ample material to reveal complicity of the Applicant in the commission of the crime and as such, the Application be rejected. Mr. Ketkar also placed reliance on the decision of the Delhi High Court in the matter of *Praveen vs State of Govt of NCT of Delhi*⁵. The Delhi High Court, in similar circumstances, relying upon the CDR records, the transcripts of the intercepted calls, rejected the bail application holding that the accused in that matter seemed *prima facie* involved in the organized narcotic network. Mr. Ketkar also relied upon a decision of the Supreme Court in the matter of *NCB v. Mohit Aggarwal*⁶. Therein, the Supreme Court observed, on the basis of similar material available with the NCB in that case, the conditions imposed in Section 37(2) of the NDPS Act, were not fulfilled. Further, Mr. Ketkar also relied on the decision of the Supreme

5 2025 DHC:2759
6 (2022) 18 SCC 374

Court in the matter of *Union of India v. Khalil Uddin*⁷, etc. wherein the Supreme Court, in similar circumstances rejected the bail application of the Applicant.

6. I have heard learned counsel for the respective parties and perused the record of the case with their assistance.

7. At the very outset, it is important to note that the Supreme Court is seized with the challenge of the DRI to the bail granted to Accused No.2 by this Court in the same C.R. Hence, I am not inclined to consider the Application of the Applicant on the principle of parity, at this stage.

8. I have perused the panchanama dated 14th February, 2023 drawn at Chhatrapati Shivaji Maharaj International Airport, Mumbai. The panchanama indicates that the Applicant was awaiting the Accused No.1, who was carrying contraband in her baggage. The statement of Accused No.1 also reveals the involvement of the present Applicant, *albeit*, the said statement is inadmissible at the time of the

7 (2022) SCC OnLine SC 2109

trial on account of being given to the police. I have gone through the CDR records. The CDR record clearly reveals that there was communication between Accused No.1 and Accused No.3. The bank statements also reveal that were financial transactions by and between Accused Nos.2 and 3 *inter se* relating to the incoming contraband. The contraband recovered from Accused No.1 is almost 11.94 Kgs of Heroin which is much beyond the commercial quantity.

9. The material on record including the bank statements and forensic data *prima facie* reveal involvement of the Applicant in the smuggling racket, run in connivance with the other accused. There is also material to establish that the present Applicant has previously done similar transactions and brought in contraband from foreign shores into India by luring other passengers to carry such substance for consideration. In these circumstances, I am unable to record a finding that the present Applicant is not involved in the commission of the present offence, nor I am able to record a finding that he is unlikely to repeat such an offence. In my

considered view, in the face of the mandate of Section 37 of the NDPS Act, I am unable to release the Applicant on bail. In these circumstances, I am not inclined to grant bail to the Applicant.

10. In view of the above, Bail Application is rejected.

11. 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)