

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.338 OF 2025

Faiyaz Abdul Sattar Khan Ansar .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Nilesh Bangar a/w. Mr. Kamlesh Satre, Advocates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent.
 - PSI - Mr. Ganesh Karve, RCF Police Station.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2025

P.C.:

1. Heard Mr. Bangar, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.148 of 2023 registered with RCF Police Station for offences punishable under Section 8 (c) read with Sections 22 and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. Case of prosecution against Applicant before me rests solely on the ground of statement of co-accused persons having disclosed his name in an enquiry under Section 67 of the NDPS Act. There are three Accused person in the present crime. Accused No.1 was apprehended

and arrested having been found in suspicious condition with the alleged contraband namely 25 bottles of 100 ml of Codiene Phosphate and Triprolidine Hydrochloride Syrup recovered from his possession.

4. In his enquiry, he revealed and disclosed the name of Accused No.2 being supplier of the contraband. Accused No.2 was arrested and I am informed that Accused No.2 is enlarged on bail on the ground that his arrest was solely on the basis of co-accused statement and there was no conscious recovery of any contraband from his possession. In his disclosure statement, Accused No.3 disclosed name of present Applicant.

5. However Mr. Bangar would persuade me to consider that apart from co-accused statement indicting Applicant, there is no recovery of contraband made from his possession. Applicant is incarcerated since 04.05.2024 in the present crime.

6. Mr. Karmakar, learned APP would persuade me to consider that prosecution will have good case to prove against Applicant's role in the present crime for having supplied alleged contraband to Accused No.2 which was recovered from Accused No.1.

7. On the issue of indictment of Applicant, on the basis of co-accused statement recorded under Section 67 of the NDPS Act, learned APP would leave the matter to the Court.

8. I have heard Mr. Bangar, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent and with their able assistance perused the record of the cases. Submissions made by them have received due consideration of the Court.

9. *Prima facie* indictment of Applicant is solely on the basis of co-accused statement.

10. The Supreme Court in the case of *Toofan Singh Vs. State of Tamil Nadu*¹ Court held that statements made to 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 also held that the right against self-incrimination and the 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. However, confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

11. In the decision of the Delhi High Court in the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*² Court has observed that disclosure statement of co-accused is *per se* not

¹ (2021) 4 SCC 1.

² 2023 SCC OnLine 135.

admissible without there being any corroboration thereof. Relevant paragraph No. 24 therein 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*³ the Delhi High Court in paragraph Nos. 63 and 67 of its judgment while interpreting Section 67 of the NDPS Act vis-a-vis Section 25 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.

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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 CrI. 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:

³ (2023) SCC OnLine Del 134.

“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 view of the aforesaid *prima facie* observations, Applicant has made out case for grant of bail.

14. Applicant is granted bail on the following terms:-

- (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 with 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.

15. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

16. Bail Application No.338 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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