

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.429 OF 2025**

Arbaz Aslam Shaikh	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Khan Sherali Shakhibgul, *with Tabish Shaikh, for the Applicant.*

Ms. Megha S Bajoria, *APP for the Respondent-State.*

Mr. N B Chavan, *PSI attached to ANC Azad Maidan Unit, present.*

CORAM:	DR. NEELA GOKHALE, J.
RESERVED ON :	17 th NOVEMBER 2025
PRONOUNCED ON :	21 st NOVEMBER 2025

Judgment:-

1. The Applicant seeks his release on bail in connection with C.R. No.92 of 2023 dated 3rd November, 2023, registered with the ANC, Azad Maidan Unit, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. The facts of the case, in brief are that, on 2nd November, 2023, when the officials of the ANC, Azad Maidan Unit, were out for patrolling, at about 10:30 p.m., they found one person lurking in suspicious circumstances near the Jogeshwari Police station bus stop next to an electric pole on the service road, Western Express Highway, Southwards, Jogeshwari (E). The Police made enquiries with him and asked him for his identity. The said person started running away on his two-wheeler, the Police stopped him. They identified themselves as Police Officers and started questioning him. Since he gave evasive answers, the Police detained him and proceeded to comply with the statutory provisions of the NDPS Act, including getting Panchas and other material, etc. On his personal search, 100 grams of Mephedrone (MD) was recovered from him. The said contraband was placed in a plastic pouch and stapled. The plastic pouch was in turn kept in an envelope, which was sealed and marked as Exhibit 'A'. The said person was

identified as Hardik Chandubhai Solanki, namely, the Accused No.1.

3. Said Solanki told the Police that he was using the two-wheeler to distribute the contraband. He also told the Police that one Adam Hussain was his supplier and offered to take them to Adam. The Police proceeded with the patrolling to nab said Adam since, they had an apprehension that he will abscond once he learnt about the arrest of Solanki. Thus, they proceeded to look for Adam, as per Solanki's directions.

4. Solanki took the Police to the shop of one Raza, a key-maker, from which place, Adam operated. Thus, the Police set a trap for Adam. One person came and appeared to be waiting for someone. Solanki identified the said person as Adam. The Police apprehended Adam. After complying with the statutory provisions of the NDPS Act, the Police searched him. When the Police questioned him as to his supplier, he revealed that he had purchased it from the Applicant, who resided in

Kalina, Santacruz. Thus, the Police continued their patrolling, keeping a lookout for the persons involved in the crime.

5. The Police went to the location revealed by Adam. On seeing the police, the Applicant attempted to run away. However, the Police caught up with him and apprehended him. After following the due process of law, the Police searched the Applicant and recovered 100 grams of Mephedrone in a plastic pouch from the left pocket of his *kurta*. ***The Police also recovered 100 grams of Mephedrone in a plastic pouch from a cupboard on the loft of the Applicant's house.*** In this manner, the Applicant came to be arrested on 3rd November 2023.

6. The Applicant made an application seeking bail before the Special Court, NDPS Act, Greater Bombay. However, by order dated 19th September 2024, the said bail application was rejected. Hence, the Applicant has filed the present Bail Application for the relief as prayed.

7. Both the counsels sought time to place on record their written submissions. The same are filed by both the counsels on 17th and 18th November 2025 respectively. The same are taken on record.

8. Mr. Sherali Khan, learned counsel, represented the Applicant and Ms. Megha Bajoria, learned APP, represented the State.

9. Mr. Khan's arguments are as under:

- i) Compliance under Section 42 of the NDPS Act is not made as once the Accused No.2 - Adam shared information regarding the present Applicant, the same ought to have been reproduced in writing and sent to the superior officer, which according to Mr. Khan, was not done.
- ii) In case the information was received by the Police on patrolling and the Police apprehended delay in the time spent in reducing the information in writing, it was binding on the Police, to thereafter and as soon as

practical, record the information in writing and convey the same to the superior officer.

- iii) There was a delay of three hours in lodging the FIR.
- iv) The Panchanama was recorded on 3rd November 2023, but the Inventory Panchanama was recorded only on 8th November, 2023.
- v) The certification under Section 52A does not certify the correctness of the samples drawn.
- vi) There is non-compliance of Section 50 of the NDPS Act.
- vii) The Applicant is in custody from 3rd November 2023 and the charges are not framed as yet. The Applicant thus, deserves to be released on bail on the ground of long incarceration.

10. Per contra, Ms. Bajoria, learned APP representing the State in the matter, submitted as under:

- i) Since the entire operation commenced upon a chance recovery during patrolling, strict compliance of Section 42 is not mandatory. It is settled law that searches and

seizure during patrolling fall within the scope of Section 43 and not Section 42. The information regarding Applicant is not based on intelligence received by the Police but during patrolling.

- ii) The Applicant was apprehended based on real time information by the co-accused during the course of a continued operation, which does not come strictly under the category of prior information.
- iii) Compliance of all the statutory provisions is made. The Applicant was served with a written notice as required under Section 50 and the notice bears his endorsement.
- iv) The delay in registering the FIR has no fatal consequences and no prejudice is shown to be caused by the same.
- v) The samples were duly drawn, sealed and deposited as per the requirements of the NDPS Act. The Applicant has not demonstrated any tampering.
- vi) A detailed action taken report was furnished to the immediate superior officer.

- vii) 100 grams of Mephedrone i.e. of commercial quantity was found on the person of the Applicant. Additionally, Rs.15 lakhs cash and 100 zip lock bags were also found in his house indicating his involvement in drug trafficking.
- viii) Rigors of Section 37 are not fulfilled, and long incarceration alone is not sufficient to override the mandate of Section 37.

Ms. Bajoria hence, resisted the Bail Application.

11. I have carefully considered the arguments advanced by the learned counsels for the respective parties and perused the record of the case.

12. The provisions of Section 37 of the NDPS Act read 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 27A 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.”

13. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence

under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

14. The expression “reasonable ground” came up for discussion in *State of Kerala and others Vs. Rajesh and others*¹ and the Supreme Court has observed in paragraph 20 as below:

¹ (2020) 12 SCC 122

“20. The expression ”reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”

“the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

15. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an

additional consideration that the accused person is unlikely to commit any offence while on bail.

16. In a recent decision of the Supreme Court in the matter of ***NCB v. Mohit Agrawal***,² observed as under:-

“15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with, and he is unlikely to commit an offence under the Act while on bail.”

17. Returning to the facts of the present case, admittedly, the offending substance was recovered from the pocket of the Applicant. Additionally, material to indicate the Applicant's involvement in a drug supply operation, was also recovered

2 (2022) 18 SCC 374

from his house. The actual contraband recovered is from his person, which did not require the officers to enter into, search any building, conveyance or place.

18. Mr. Khan has placed reliance on the decision of the Supreme Court in ***Karnail Singh v. State of Haryana***³. The Supreme Court in its penultimate paragraph, held as under:-

“35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the Police station, but while he was on the move either on patrol duty or otherwise, either by

3 (2009) 8 SCC 539

mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused

escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the Police officer was in the Police station with sufficient time to take action, and if the Police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the Police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.”

19. I have gone through the said decision carefully. In the facts of the present case, sub clause (b) of paragraph No.35 of the aforesaid decision is attracted, since the Police officers were not in the Police station but on patrolling duty. Thus, while on the move, they received real time information from

co-accused regarding movement and involvement of the present Applicant. What they were required to do in these circumstances in compliance of clause (a) to (d) of Section 42 was, thereafter, as soon as practical to record the information in writing and forthwith inform the same to the superior officer.

20. Admittedly, Mephedrone of commercial quantity was recovered from the person of the Applicant and there was no requirement for the officers to enter the place. Section 43 of the NDPS Act, dealing with the power of seizure and arrest of the suspect in a public place is attracted.

21. Ms. Bajoria has drawn my attention to a letter dated 3rd November 2023, addressed by the Police officials to their superior officer. No doubt, that the title of the said letter indicates this as a 'special report' as per Section 57 of the NDPS Act. I have gone through the contents of the said report. It is a detailed narration of the events that transpired leading to the arrest of the accused including the Applicant and the

circumstances in which the information was received by the Officers, from Adam. Considering that the Applicant was apprehended on account of real time information provided by co-accused and the entire patrolling activity was in a continued sequence, at the very first opportunity, on the date of the Applicant's arrest itself, information was reduced into writing and conveyed to the superior officer. Notwithstanding that the information reduced into writing and forwarded to the superior officer bears the words 'special report', the object of Section 42 that the information received is to be reduced into writing and forwarded to a superior officer is fulfilled. The fact that the said letter bears the words 'special report' does not take away the significance of the contents of the letter that the information regarding the Applicant is reduced into writing and conveyed to the superior officer, as soon as practical. Generally, compliance under Section 42 of the NDPS Act should precede the entry, search and seizure by the officer but in special circumstances involving emergent situations, the recording of information may get postponed by a

reasonable period, which is permissible under the law. The question is thus, one of urgency and expediency. In the facts and circumstances of the present matter, I am satisfied that there is no significance non-compliance of Section 42 of the NDPS Act.

22. In so far as the allegation of Mr. Khan relating to non-compliance of Section 50 requirement is concerned, I have seen the letter dated 3rd November 2023 written by the Police Officer concerned. The letter indicates that the Applicant was apprised of his rights under Section 50 and he has endorsed his understanding of the same in writing on the said letter. Two panchas have signed the said letter. I am satisfied that requirements of Section 50 of the NDPS Act were complied with.

23. In the facts of the present case, 100 gms. of MD was recovered from the person of the Applicant. The Applicant is in custody for about two years whereas the maximum punishment for the alleged offence is up to twenty years. The

incarceration of the Applicant cannot be considered to be long incarceration, having regard to the maximum punishment for the offence. The Supreme Court in its recent judgment in the matter of *Union of India v. Vigin Varghese*⁴, has observed that finding of prolonged incarceration as justification for bail is not a causal observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. The Apex Court further observed that a conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks *trenching* upon, appreciation of evidence, which would be in the domain of Trial Court at the first instance.

24. Reasonable grounds are not available for believing that the accused is not guilty of the offences that he has been charged with. Thus, the narrow parameters of the bail available under Section 37 of the Act, have not been satisfied

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in the instant case. In view of the aforesaid discussion, I am not inclined to enlarge the Applicant on bail.

25. The Application is dismissed.

(DR. NEELA GOKHALE, J)

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