

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 464 OF 2025

Nitin Shankar Mhamunkar

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Rajendra S. Bidkar for Applicant
- Mr. B.B. Kulkarni, APP for State
- PI Santosh Salunkhe for ANC, Worli present in Court

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 18, 2025

P. C.:

1. Heard Mr. Bidkar, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with C.R. No. 82 of 2023 registered with ANC, Worli Unit, Mumbai for offences under sections 8(c) readwith 22(c) of the Narcotics and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). Applicant is incarcerated since 28.09.2023.

3. At the outset, my attention is drawn to order dated 17.02.2025 by which this Court has directed the learned Prosecutor to take appropriate instructions on the issue of discrepancy in the identification of the alleged contraband in the seizure panchnama *vis-*

a-vis the Magistrate's Certificate. For reference, order dated 17.02.2025 is reproduced hereinbelow:-

"1. Heard Mr. Bidkar, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.

2. Indictment of the Application is under the provisions of NDPS Act. Mr. Bidkar would submit that there is prima facie discrepancy in identification of the alleged contraband which has been seized. He would submit that alleged contraband is described as rectangular and triangular shape tablets with 2.0 embossing mentioned in memorandum of panchnama i.e. seizure panchanama (page No. 36 of the Application) whereas in the Magistrate's Certificate with respect to the same contraband sent for chemical analysis (page No. 72 of the Application), description of the same contraband is alleged stated to be square and diamond shape tablets with word embossed "BERCHRIN 2.0".

3. Learned APP shall take appropriate instructions from the concerned Investigating Officer (IO) on the aforesaid submissions and apprise the Court on the next adjourned date as the same directly transgresses the provisions required to be followed under Sections 50 and 52 of the NDPS Act.

*4. Stand over to **18th March, 2025 at 2:30 p.m.**"*

4. Mr. Kulkarni, learned APP would submit that Applicant was apprehended in a chance recovery and the contraband seized from him viz; MDMA / ecstasy is of commercial quantity i.e. 51.04 grams and hence rigours of Section 37 would squarely apply in the facts of the present case. He would also submit that Applicant has antecedents to his discredit and hence this Court may be cautious while deciding

the present Bail Application. He would submit that if Applicant is released on bail, the possibility of tampering with evidence and influencing witnesses cannot be ruled out which may be considered by this Court.

5. Regarding the query raised by this Court as delineated in paragraph No. 2 of the above order, Mr. Kulkarni would submit that the same may not be considered by the Court for grant of bail to the Applicant and it would be the matter of trial. He has drawn my attention to the CA Report of the contraband appended at page No. 72 which concludes that the contraband sent to the FSL is MDMA.

6. However the question raised by the Court is with respect to the dichotomy in the identity of the alleged contraband which can be evinced from the seizure panchnama at page No.36 and Inventory panchnama at page No.50 juxtaposed with the Chemical Analysis Report at page No.72 of the Application. However in the seizure panchanama appended at page No. 36 of the Application the alleged contraband is described as MDMA. In the inventory panchanama appended at page No. 50 the alleged contraband is described as rectangular and triangular shaped tablet with 2.0 embossed on it however the same alleged contraband when received from the Chemical Analyst in the Chemical Analysis Report appended at page No. 72 is described as a square and diamond shaped tablets with

'Berchrin, 2.0' embossed on it. The aforesaid *prima facie* dichotomy between rectangular/ triangular and square/diamond shape with different embossing for identification of the alleged contraband is *prima facie* noticed from the prosecution documents. The transgression of Sections 42 and 52-A is therefore *prima facie* observed which would go to the root of the matter entitling benefit of the same to be given to the applicant.

7. In the case of ***Sarija Banu & Anr. Vs. The State of Maharashtra***¹, the Supreme Court has held that compliance of Section 42 of the NDPS Act is mandatory and it is a relevant fact required to be taken into cognizance by Court while considering the Bail Application. This pronouncement of the Supreme Court has been adverted to by this Court in Bail Application No. 4252 of 2024 (Mohsin Kayyum Sayyed v. The State of Maharashtra) decided on 10.03.2025.

8. In so far as Section 52-A of the NDPS Act is concerned, the CA report received pursuant to the forensic examination of the alleged contraband pertains to a differently described substance than the one that is seized. *Prima facie* when the aforesaid facts are seen, Applicant is entitled to be released on bail.

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

1 (2004) 12 SCC 266

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 50,000/- each for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 50,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide the sureties as directed;
- (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;

(viii) 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; and

(ix) 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.

10. 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.

11. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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