

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 692 OF 2025

Aavesh @ Ajju Karim Sayyed Shaikh .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Kamlesh Satre a/w Mr. Nilesh Bangar, Advocates for Applicant
- Ms. Megha S. Bajoria, APP for Respondent - State
- Sonkamble, PSI, Mahim Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2025

P. C.:

1. Heard Mr. Satre, Advocate for Applicant and Ms. Bajoria, 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 in connection with C.R. No. 282/2023 registered with Mahim Police Station, Mumbai for offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short, "**NDPS Act**")

3. On 20.02.2025 after hearing learned Advocate for Applicant and learned APP following order was passed:-

"1. Heard Mr. Satre, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. *This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.282 of 2023 registered with Mahim Police Station, Mumbai for the offences punishable under Sections 8(c) and 22(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').*

3. *Indictment of the Applicant is for apprehending him with 57 grams of MD. Defence of the Applicant is that in the memorandum panchanama / seizure panchanama appended at page No.25 of the Application it is categorically stated that on the instructions of the concerned Investigation Officer / Police Inspector the entire police party has conducted the search of the Applicant.*

4. *Prima facie this is a transgression of the provisions of Section 50 of the NDPS Act on the basis of record.*

5. *Ms. Bajoria, learned APP is directed to take appropriate instructions from the concerned Investigating Officer and apprise the Court on the next adjourned date as to the submissions made by the learned Advocate for Applicant.*

6. *Stand over to 19th March, 2025 at 02:30 p.m.*

4. On *prima facie* verification of panchnama appended at page Nos. 29-32 of the Application, when read at page No. 30, it is seen that search of Applicant is carried out by Police Constable – Mr. Dipak Pawar on the instructions of concerned statutory officer. However the person who has appended his signature on the seizure panchnama is not the authorized officer but it is by Police Sub-Inspector - Snehal Patil who is not an authorized officer as contemplated under the provisions of Section 42 of NDPS Act. In view of this *prima facie* transgression, prosecution case stands vitiated and hence Applicant is entitled to be released on bail. Hence, Bail 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) Applicant is permitted to furnish provisional cash bail of Rs. 25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) 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;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;

- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. Applicant shall deposit his passport, if any, with the Trial Court.
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; 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.

5. 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.

6. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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2025.05.07
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