

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.734 OF 2025**

Mohd Hussain Abdullal Khan

...Applicant

*Versus*

State of Maharashtra

...Respondent

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**Ms. Ashwinii Achari**, *for the Applicant.*

**Mr. Yogesh Y.Dabke**, *APP for the Respondent - State.*

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**CORAM DR. NEELA GOKHALE, J.**

**DATED: 25<sup>th</sup> SEPTEMBER 2025**

**PC:-**

**1.** By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.714 of 2023 registered with the Mumbra Police Station, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

**2.** It is the case of the prosecution that on 11<sup>th</sup> July, 2023, while police staff were on patrolling duty, they received specific information regarding the Applicant i.e., the Accused

No.3 and the co-accused selling narcotic substance under Y Junction Bridge. After receiving the information, the same was conveyed to the superiors and upon directions from the superiors, the patrolling party went to the spot of incident. They found three suspicious persons one of whom was a foreigner, in one corner giving a plastic bag to one of the other two persons. Thereafter, the foreigner and the other persons were apprehended by the police and the panchas were called. After complying with all the requirements of the Act, all three accused including the Applicant herein were arrested. Approximately, 110 grams of Mephedrone (MD) was found with the Accused No.2, which is of commercial quantity as per the NDPS Act. Accused No.2 informed the police that the said substance was given to him by Accused No.1, for himself and for Accused No.3 i.e. the Applicant herein. The narcotic substance was seized and sealed alongwith the mobile phones and some cash was recovered from one of the accused. After preparing an inventory, the charge-sheet was filed.

**3.** The Applicant made a bail application before the Special Judge, however, by order dated 4<sup>th</sup> February, 2025 the said application was rejected. Hence, the Applicant is before this Court for the reliefs as prayed.

**4.** Ms.Achari, learned counsel for the Applicant, at the very outset, brought to my notice, orders dated 22<sup>nd</sup> August, 2022 and 12<sup>th</sup> December, 2024, passed by this Court allowing bail applications filed by the co-accused persons. Thus, Ms.Achari's first contention is that the present Applicant whose role is much less in degree than the role attributed to the co-accused, must also be enlarged on bail. She submits that the Applicant was arrested on 11<sup>th</sup> July, 2023 and till date no charges have been framed. She thus submits that even on the ground of long incarceration the Applicant deserves to be released on bail.

**5.** Mr.Dabke, learned APP representing the State, contests the present Application. He submits that although the co-accused are enlarged on bail for non-compliance of

requirements under the Act, the police officials have complied with all the requirements of the NDPS Act. He also places reliance on the decisions of the Supreme Court in the matter of *Narcotics Control Bureau v. Kashif*<sup>1</sup> and *Bharat Aambale v. State of Chhattisgarh*<sup>2</sup>. In the case of *Kashif (supra)*, the Supreme Court has summarized its observations in paragraph No.39 (v). Paragraph No.39 (v) of the said judgment reads thus:-

“39. (i) .....

(ii) .....

(iii) .....

(iv) .....

(v) *Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and*

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**1** (2024) 11 SCC 372

**2** (2025) SCC OnLine SC 110

*find out whether any serious prejudice has been caused to the accused.”*

**6.** The decision in the case of ***Bharat Aambale (supra)*** follows the decision of ***Kashif (supra)***. Paragraph No.50 (V) and (VI) read thus:-

“50. ....

(I)....

(II) ....

(III) ....

(IV) ....

(V) *Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution’s case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.*

(VI) *If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.”*

**7.** He thus submits that even if there is an allegation of non-compliance of any provision of the NDPS Act, merely on technicality the Applicant must not be enlarged on bail. He further submits that the Applicant was present at the spot and he was very well conscious of the fact that there was an exchange of the narcotic substance. He thus, states that the Bail Application of the Applicant be rejected.

**8.** I have heard learned counsels for both the parties and perused the record with their assistance.

**9.** Undoubtedly, as on date the settled law is that, if other material on record adduced by the prosecution, inspires confidence and satisfies the Court as regards the recovery as well as the conscious possession of the contraband from the accused persons, then even in such case the Court can without hesitation, proceed to hold the accused guilty notwithstanding any procedural defect.

**10.** However, in the present case the co-accused are enlarged on bail by this Court holding non-compliance of Section 52A (2) (c) of the NDPS Act. The role attributed to the co-accused who are enlarged on bail by this Court is of higher degree than the role of the present Applicant inasmuch as there was nothing recovered from the person of the Applicant. On the contrary, 110 grams of Mephedrone (MD) was recovered from the co-accused yet he was released. Hence, considering the principle of parity, I am inclined to grant bail to the Applicant.

**11.** In any case, admittedly while being incarcerated for 2 years and 1 month, till date charges are not framed. The Supreme Court in a series of its decisions, held that, prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation the conditional liberty must override the statutory embargo to created under Section 37(1)(d)(ii) of the NDPS Act.

**12.** In view of the aforesaid discussions, I am of the view that this is a fit case for grant of bail. Hence, the following order is passed:-

**ORDER**

A) The Applicant shall be released on bail in connection with FIR No.714 of 2023 registered on the same date at Mumbra Police Station, District Thane for offence under Sections 8(c) and 22(c) read with 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985, on furnishing P.R. Bond of Rs.50,000/ with one or two local sureties in the like amount to the satisfaction of the Trial Court;

B) The Applicant shall report to the Mumbra Police Station, District: Thane, on first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial;

C) The Applicant shall not tamper with the evidence in any manner. He shall not influence the

informant, witnesses or any other persons concerned with the case;

D) The Applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.

**13.** Needless to say, violation of any of the aforesaid conditions may lead to cancellation of the present order.

**14.** Application is allowed in the above terms and is accordingly disposed of.

**15.** 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)