

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.812 OF 2025

Saiyed Mustufa Miya	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Aseem Naphade with Mr. Ashish A. Dubey, Ajay Dube, and Ms. Yogita Kanojiya for the applicant.

Mrs. Mahalaxmi Ganapathy, APP for the respondent-State.

Mr.N.B. Chavan, PSI, ANC, Azad Maidan Unit, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 3, 2025

P.C.:

1. By way of the present application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant seeks his release on regular bail in connection with Crime Register No.10 of 2024 registered with Anti-Narcotics Cell, Azad Maidan Unit, Mumbai. The said crime pertains to offences punishable under Sections 8(c), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act").

2. The prosecution case, in brief, is that on 9th February 2024, while the patrolling officers of the ANC, Azad Maidan Unit, were conducting routine surveillance on the Western Express Highway

at Dahisar, they noticed the suspicious conduct of the applicant. It is alleged that upon seeing the police vehicle, the applicant attempted to flee, which raised further suspicion. The police, therefore, stopped him and, in the presence of two panch witnesses, carried out his personal search after complying with necessary formalities. Upon inquiry regarding his identity and language, the applicant disclosed his residence as being in the State of Gujarat and stated that he could converse in Hindi.

3. It is the case of the prosecution that the police officers, after apprising the applicant in Hindi about the reason for his search, asked him regarding the contents of the black bag in his possession. In response, the applicant is alleged to have stated in Hindi, “Mere paas nasha karne ki cheez charas hai! So main chhip raha tha.” The prosecution further states that the procedural requirements under Section 50 of the NDPS Act were explained to the applicant orally in Hindi, and a notice in Hindi was prepared, which the applicant duly signed. Upon search, 3 kilogram of charas was found in his possession. The said contraband was seized, sealed on the spot, and proper labeling was done in the presence of panch witnesses. The applicant was thereafter arrested on the same day.

4. Learned counsel appearing for the applicant has vehemently contended that there has been non-compliance with the mandatory provision of Section 50 of the NDPS Act. It is submitted that the applicant is not conversant with the Marathi language and understands only Gujarati and Hindi. The learned advocate further submitted that the statutory notice under Section 50 was read out

to the applicant in Marathi and not in a language understood by him. It is, therefore, the contention of the applicant that the safeguards enshrined under Section 50 have not been duly complied with, rendering the alleged recovery vitiated in the eyes of law. On these grounds, the applicant prays for being released on bail.

5. Per contra, the learned Additional Public Prosecutor appearing for the State has opposed the grant of bail and submitted that the quantity of charas recovered from the possession of the applicant is 3 kilograms, which falls within the ambit of 'commercial quantity' as per the Notification issued under the NDPS Act. It is further contended that the applicant is a resident of Gujarat, and there is a reasonable apprehension that he may abscond and evade the due process of law if released on bail. The learned APP has further invited attention to the spot panchanama, which records that the applicant was informed of his right under Section 50 in Hindi, and that he responded in Hindi. It is submitted that not only was the oral explanation of rights communicated in Hindi, but the notice under Section 50 was also prepared and signed by the applicant in Hindi, thereby establishing full compliance with the statutory mandate of Section 50. Hence, the learned APP has prayed for rejection of the present bail application.

6. I have given my anxious consideration to the rival submissions advanced on behalf of the applicant and the learned Additional Public Prosecutor for the State. I have also perused the material placed on record, including the panchanama and the

statements recorded during the course of investigation.

7. At the outset, it must be noted that the offence alleged against the applicant involves recovery of *charas* in a quantity stated to be 3 kilograms, which is admittedly a ‘commercial quantity’ within the meaning of the Notification issued under Section 2(viia) and 2(viib) of the NDPS Act. In terms of Section 37(1)(b) of the Act, in cases involving commercial quantity, the Court is precluded from granting bail unless two conditions are satisfied: firstly, that the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence, and secondly, that he is not likely to commit any offence while on bail.

8. The principal contention urged on behalf of the applicant is with respect to alleged non-compliance of the mandatory safeguards under Section 50 of the NDPS Act. However, a perusal of the spot panchanama, which is duly signed by two independent panch witnesses, indicates that the police officer had informed the applicant in Hindi language—being the language disclosed by the applicant himself—about his right to be searched in the presence of a Magistrate or a Gazetted Officer. The said information was orally conveyed and also recorded in a letter prepared in Hindi, which bears the signature of the applicant. This factual position is not controverted by any cogent material to the contrary.

9. It is a settled position of law that the requirement of Section 50 is only attracted in case of personal search, and even in such cases, so long as the accused is made aware of his legal right in a

language understood by him, the mandate of the law is deemed to be fulfilled. The right under Section 50 must be explained in a meaningful manner, but the manner and form are not of rigid prescription, so long as the accused is made aware of his right. In the present case, the record prima facie indicates that such compliance has been made.

10. Furthermore, the nature of the substance recovered, the quantity thereof, and the circumstances in which the accused attempted to flee upon seeing the police, coupled with his being a resident of another State, raise serious concerns regarding the possibility of the applicant absconding or tampering with the evidence, if released on bail. The possibility of the applicant indulging in similar offences cannot be ruled out.

11. In view of the above factual matrix and legal position, this Court is not satisfied that the twin conditions laid down in Section 37(1)(b) of the NDPS Act stand satisfied. At this stage, there are no reasonable grounds to believe that the applicant is not guilty of the alleged offence. Hence, no case for grant of bail is made out.

12. Accordingly, the present bail application stands rejected.

(AMIT BORKAR, J.)