

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4903 OF 2024

Riyazali Ahmed Khan	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 825 OF 2025**

Niyaz Shabbir Khan	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Ms. Rithika Yerra, Advocate i/by Mr. Anil Lalla for Applicant in Bail Application No.4903 of 2024.
 - Mr. Kamlesh Satre a/w. Mr. Atul Sarpande and Mr. Pranay Saraf, Advocates for Applicant in Bail Application No.825 of 2025.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State in Bail Application No.4903 of 2024.
 - Ms. Mahalakshmi Ganapathy, APP for Respondent – State in Bail Application No.825 of 2025.
 - Mr. N.B. Chavan, PSI – ANC Azad Maidan Unit present

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CORAM : MILIND N. JADHAV, J.
DATE : APRIL 04, 2025.

P.C.:

1. Heard Ms. Yerra, learned Advocate for Applicant in Bail Application No.4903 of 2024; Mr. Satre, learned Advocate for Applicant in Bail Application No.825 of 2025; Mr. Karmakar, learned APP for Respondent – State in Bail Application No.4903 of 2024 and Ms. Ganapathy, learned APP for Respondent – State in Bail Application No.825 of 2025.

2. This is a group of two Bail Applications. In Bail Application No.4903 of 2024, Applicant is arraigned as Accused No.1 in the crime whereas in Bail Application No.825 of 2025, Applicant is arraigned as Accused No.3 in the present case. Accused Nos.1 and 2 were apprehended in a chance recovery due to their suspicious movements by a patrolling team and found with the alleged contraband. 115 grams of Mephedrone (MD) was recovered from Accused No.1 whereas intermediate quantity of 25 grams of MD was recovered from Accused No.2.

3. Accused No.2 is already enlarged on bail. Date of arrest is 23.06.2023. In the enquiry conducted under Section 67 of the NDPS Act, Accused No.1 disclosed the name of Accused No.3 as being the supplier of the alleged contraband to him. Hence, Accused No.3 was also apprehended and arrested.

4. *Prima facie* in so far as Accused No.3 is concerned, at the time of his arrest he was already incarcerated in prison in another NDPS offence. Hence, the veracity of the statement recorded under Section 67 of the NDPS Act about Accused No.1 having disclosed that the alleged contraband was supplied by Accused No.3 to him *prima facie* becomes a suspect.

5. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹ held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Indian Evidence Act, 1872 to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

6. Ms. Ganapathy, learned APP for Respondent – State in Bail Application No.825 of 2025 persuades the Court to consider that Accused No.3 has antecedents against him. *Prima facie*, I find no reason as to why his custody is warranted which is solely based on the statement of co-accused recorded by the NDPS Officers as delineated hereinabove when no contraband is recovered from his conscious possession.

7. In so far as Accused No.1 is concerned, though learned Advocate has persuaded me to consider the seizure panchnama, inventory panchnama as also the other documentary evidence placed

¹ (2021) 4 SCC 1

on record and appended to the charge-sheet for giving an imprimatur *prima facie* on transgression of the statutory provisions, I have heard Mr. Karmakar, learned APP for the Respondent – State in Bail Application No.4903 of 2024. Though Mr. Karmakar would *prima facie* submit that even if there is a technical transgression of any of the statutory provisions it would not wish away the fact that Accused No.1 was apprehended with the alleged contraband weighing commercial quantity thereby inviting rigors of Section 37 of the NDPS Act. He would submit that in that view of the matter, the onus would lie on the Applicant to prove that he was not involved in the crime and his arrest is *prima facie mala fide* and he be released on bail.

8. Mr. Karmakar would also persuade the Court to consider the aspect of not giving any imprimatur or *prima facie* observations on the grounds of transgression since it would affect the trial which the prosecution desires to undertake before the Trial Court. He would submit that giving a *prima facie* opinion on transgression of any of the statutory provisions would probably entail the prosecution not to rely upon the same at the time of trial and it would otherwise amount to giving a clean chit to the Applicant at an interim stage.

9. He would in his usual fairness however inform the Court that there is *prima facie* delay in commencing the trial which is evident from the face of record since for the past 1 year and 5 months the

Applicant is incarcerated but charge has not been framed. To that extent Mr. Karmakar as also Ms. Ganapathy, learned prosecutors would persuade the Court to pass appropriate orders.

10. I have heard Ms. Yerra, learned learned Advocate for Applicant in Bail Application No.4903 of 2024; Mr. Satre, learned Advocate for Applicant in Bail Application No.825 of 2025; Mr. Karmakar, learned APP for Respondent – State in Bail Application No.4903 of 2024 and Ms. Ganapathy, learned APP for Respondent – State in Bail Application No.825 of 2025 with their able assistance perused the record of the case.

11. On the aforementioned delineated facts and adhering to the submissions made by the learned prosecutors, *prima facie*, I am of the opinion that due to long incarceration of the Applicant in Bail Application No.4903 of 2024 for more than 1 year and 9 months pending trial Applicant can be released on bail. One of the reason which impels me to consider the ground of long incarceration of the Applicant being the only ground for consideration are the submissions made by the learned prosecutors lest any *prima facie* imprimatur by this Court on statutory transgression of procedure at this stage may affect the prosecution case at the time of trial before the Trial Court. Equally, considering the role of Applicant in Bail Application No.825 of 2025 and his indictment solely on the basis of co-accused statement

and the above *prima facie* observations, he is also entitled to be released on bail. Complicity of both Accused persons can be proved by the Prosecution at the time of trial. In that view of the matter, both Applicants can be released on bail.

12. Hence, Bail Applications are allowed subject to the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Applicants are permitted to furnish provisional cash bail of Rs.50,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs.50,000/- each within a period of four weeks after their release which shall be accepted by the Trial Court. Applicants shall provide sureties as directed;
- (iii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iv) After their release from jail, Applicants shall report to

the Investigating Officer as and when called for;

- (v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (vi) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicants 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 their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

13. 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.

14. Both Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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