Ashish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 894 OF 2025

Avinash Shreemaster Kushwaha … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Amit Mane a/w Mr. Sanket Mane, Mr. Ambadas Pagare i/b Silvin Kale for the applicant.

Mrs.Shilpa Talhar, APP for respondent No.1-State.

Mr. Uday Pathak, P.S.I., Kashigaon Police Station.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 20, 2025

P.C.:

1. By the present bail application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) / Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), the applicant is seeking his release on regular bail in connection with Crime Register No. 212 of 2024 registered at Kashigaon Police Station, for the offences punishable under Section 22(c), read with Section 8(c) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short).

2. As per the case of the prosecution, on 20th July, 2024, the officers of the respondent police received a secret and reliable information that one person by name Saud Sayyed along with an

African national woman named Sabrina Nuzumbi were engaged in illegal trade of narcotic drugs and that they were likely to come near R.T.O., Ghodbunder Road for selling drugs. Acting on this information, the police complied with the mandatory requirements of the NDPS Act, made arrangements for a raid, called independent panch witnesses, and proceeded to the said spot with all necessary instruments for search and seizure. At about 12.30 p.m., two persons matching the description given in the information arrived at the spot on a motorcycle. They were intercepted by the police. Both were informed of their statutory right under Section 50 of the NDPS Act to be searched in the presence of a Gazetted Officer or a Magistrate. Upon conducting search, accused No.1 Saud Sayyed was found in possession of 504.1 grams of Mephedrone and accused No.2 Sabrina Nuzumbi was found in possession of 505.4 grams of Mephedrone. The contraband was seized following the prescribed procedure of drawing samples, sealing and labeling in presence of panch witnesses, and a report was lodged.

3. During the course of investigation, it was revealed that the present applicant, who has been arraigned as accused No.3, along with accused No.4, were also members of the same drug syndicate. Both of them were arrested in due course. The investigation further brought to light that accused Nos.1, 3 and 4 had certain monetary transactions inter se through their bank accounts, and therefore accused Nos.3 and 4 were treated as active members of the syndicate. On the basis of the statement of co-accused No.1, another lady, accused No.5, was also implicated and arrested as being a part of the syndicate.

4. The investigation thereafter proceeded in the usual course. Samples of the seized contraband were sent for chemical analysis, statements of relevant witnesses were recorded, and other documentary evidence was collected. Upon completion of investigation, the police filed charge-sheet against accused Nos.1 to 5. One more accused by name Valentine could not be apprehended and was shown as absconding. Hence, charge-sheet against him could not be filed.

5. The learned Advocate appearing for the applicant submitted that the applicant is a young man of 22 years of age, who is engaged in the lawful business of money transfer under the name and style of Shakti Enterprises. It is submitted that the applicant has a recognised standing in that field and has no criminal antecedents. The prosecution case, at the highest, shows that the applicant had received money from accused No.1 on three occasions. According to the learned Advocate, such receipt of money was purely in the ordinary course of business and the applicant was not aware of the source of the said amount. It is further submitted that there is no material on record to connect the applicant with absconding accused No.3 or to establish that the applicant had any knowledge about the alleged drug transactions. All documents relating to the transactions and the role of the applicant have already been seized by the investigating agency. In these circumstances, it is urged that the applicant’s continued detention is not warranted and he may be released on regular bail.

6. Per contra, the learned APP appearing for the State has strongly opposed the present application. It is submitted that the investigation has revealed that accused No.1 had transferred an amount of ₹2,46,000/- from his Union Bank of India account into the account of the applicant. This transfer, according to the prosecution, was not independent but was carried out at the instance of absconding accused No.3, who is alleged to be one of the prime movers of the syndicate. The learned APP would therefore submit that the applicant cannot claim to be an innocent receiver of money, as the funds were linked with drug trafficking. On this ground, the learned APP prayed for rejection of the bail application.

7. I have considered the rival submissions of the learned Advocate for the applicant and the learned APP for the State. I have also perused the papers of investigation placed on record.

8. It is not in dispute that the contraband Mephedrone was found in possession of accused Nos.1 and 2, and not from the applicant. The role attributed to the present applicant is limited to the receipt of certain monetary amounts, which, according to the prosecution, were transferred from accused No.1 at the instance of absconding accused No.3. Except these monetary transactions, no other material is brought on record to show that the applicant had knowledge about the nature and source of the money or that he was actively participating in the drug trafficking activity.

9. The documents relating to such monetary transactions have already been seized by the investigating agency. The charge-sheet has been filed and the investigation is complete. Therefore, the continued custody of the applicant is not necessary for any further investigation.

10. It is also relevant to note that the applicant is a young man of 22 years of age, having no previous criminal antecedents. The applicant has put forth a plausible explanation that he is engaged in the business of money transfer under the name Shakti Enterprises and the receipt of money was in the ordinary course of business. At this stage, there is no prima facie material to indicate that the applicant was aware that the money was linked to drug trafficking.

11. Though Section 37 of the NDPS Act imposes stringent conditions for grant of bail, the Court is required to see whether there are reasonable grounds to believe that the applicant is not guilty of the offence and that he is not likely to commit any offence while on bail. On a careful consideration of the material, I am of the view that the role of the applicant is distinguishable from that of accused Nos.1 and 2 from whom the contraband was recovered. The applicant's alleged involvement is restricted to financial transactions, the nature of which will be a matter of trial. At this stage, there are reasonable grounds to hold that the applicant is not directly connected with the contraband seized.

12. Having regard to the age of the applicant, absence of antecedents, completion of investigation, and the fact that the trial is likely to take considerable time, I am satisfied that the applicant has made out a case for grant of bail. The apprehension of the prosecution can be safeguarded by imposing appropriate conditions.

13. Hence, following order is passed:

i) The bail application is allowed;

ii) The applicant is directed to be released on regular bail in connection with C.R. No.212 of 2024, registered with Kashigaon Police Station, upon furnishing a personal bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

(a) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(b) The applicant shall report to the Kashigaon Police Station once in three months, between 10:00 a.m. and 12:00 noon, until further orders.

(c) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(d) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(e) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.

(f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

14. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)