

AGK

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

BAIL APPLICATION NO.915 OF 2025

Mohd. Hussain Shaikh @ Shivchand ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Mr. Vikas Kolekar with Mr. Kunal U. Shirgire, Ms. Mitalee Gaikwad, and Ms. Neeta Kolekar for the applicant.

Ms. Supriya I. Kak, APP for the respondent-State.

Mr. Awale, PSI, ANC, Azad Maidan Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 1, 2025

P.C.:

1. The present application is filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS”), seeking grant of regular bail in connection with NDPS Special Case No. 752 of 2024, arising out of Crime Register No. 87 of 2023, registered with the Anti-Narcotics Cell (ANC), Azad Maidan Unit, for offences punishable under Sections 8(c) read with 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”).

2. As per the case of the prosecution, on 18th October 2023, the officers of ANC, Azad Maidan Unit, while on patrolling duty, around 18:45 hours, noticed one person acting suspiciously near Electric Pole No. TIR 002/062 A 468, situated close to Link Road, Goregaon, Mumbai. The said person, who was later identified as accused No.1, was apprehended and searched. Upon such search, 100 grams of a contraband substance, namely Mephedrone, was recovered from him. During the course of investigation, accused No.1 disclosed the name of co-accused No.2, who was subsequently traced and searched. From the possession of accused No.2 also, 100 grams of Mephedrone was recovered. Further investigation led to the arrest of co-accused No.3, from whom yet another 100 grams of Mephedrone was seized.

3. After the arrest of accused No.3, he is alleged to have disclosed the involvement of the present applicant in the chain of illegal supply of narcotic substance. It is alleged that the applicant was acting as one of the links in the chain, by supplying the contraband through the co-accused to customers. Based on this disclosure, a trap was laid and the present applicant was apprehended at Swaraj Hind Building Compound, Malad Malwani, during late night hours, while he was allegedly waiting to deliver the contraband. It is further alleged that in compliance with the mandatory provisions of Section 50 of the NDPS Act, the applicant was duly searched and found to be in possession of 20 grams of Mephedrone.

4. Learned Advocate appearing on behalf of the applicant has submitted that, as per the case of the prosecution, the present

applicant has been allegedly found in possession of 20 grams of Mephedrone (MD), which falls within the category of non-commercial quantity as defined under the Narcotic Drugs and Psychotropic Substances Act, 1985. It is, therefore, contended that the stringent conditions imposed under Section 37 of the NDPS Act are not attracted to the present case. It is further submitted that the investigation in the matter is complete, and the charge-sheet has already been filed before the competent Court. Hence, no further custodial interrogation of the applicant is warranted. The applicant has been arrested on 30th April 2024 and has undergone sufficient period of incarceration. Therefore, it is prayed that the applicant be released on regular bail, subject to such conditions as may be deemed fit by this Court.

5. On the other hand, learned APP for the State vehemently opposed the bail application and submitted that though the applicant has been found in possession of only 20 grams of Mephedrone, the case of the prosecution is not restricted to the individual recovery from the applicant. It is submitted that the role of the applicant surfaces from the disclosure statement of *accused No.3*, wherein he revealed that the contraband was handed over to the present applicant for being further delivered to a *wanted accused*, namely Javed Siddiqui. Acting upon such disclosure, the present applicant was apprehended.

6. It is submitted that during investigation, the mobile handset of the applicant came to be seized, and upon examination of the said device, photographs of Mephedrone packets were found. These photographs, according to the prosecution, indicate the

active involvement of the applicant in the handling and possible distribution of the contraband substance. Further, it is submitted that the applicant led the investigating team to the house of wanted accused Javed Siddiqui, from where another mobile phone was recovered, allegedly containing incriminating chats and obscene videos.

7. The learned APP also pointed out that the applicant is already implicated in Crime No. 40 of 2022 registered with Vaidya Police Station for offences punishable under Sections 8(c), 22-B and 29 of the NDPS Act. It is, therefore, submitted that the applicant is a habitual offender, having nexus with narcotics trade and plays a continuing role in the illicit trafficking of psychotropic substances. It is further contended that although the applicant was not individually found in possession of commercial quantity, his role as a conspirator under Section 29 of the NDPS Act is clear and prima facie established through statements and circumstantial evidence. Hence, the applicant cannot claim to be treated differently or separately from accused Nos.1, 2, and 3, each of whom were allegedly found in possession of commercial quantity of Mephedrone.

8. In support of the prosecution's case, the learned APP placed reliance on the decision of a Coordinate Bench of this Court in Bail Application No. 3791 of 2023, in the case of *Erum Mohamed Iqbal Bashey v. Union of India*, decided on 18th April 2024, wherein it has been observed that even if the applicant is not found in physical possession of the contraband, the bar under Section 37 of the NDPS Act would apply if the case involves commercial

quantity, and the applicant is arraigned as an accused under Section 29 along with co-accused from whom commercial quantity is recovered. In the said decision, the Court held that the absence of physical possession by the applicant is not of decisive significance when the applicant's role in the conspiracy is prima facie made out.

9. I have given my thoughtful consideration to the rival submissions advanced by the learned counsel for the applicant and the learned APP for the State. I have also perused the material placed on record, including the charge-sheet and relevant statements.

10. It is not in dispute that the present applicant was found in possession of 20 grams of Mephedrone (MD), which is admittedly a non-commercial quantity. As per the Notification dated 19.10.2001 issued under the NDPS Act, the commercial quantity for Mephedrone is 50 grams and above. Therefore, by itself, the contraband allegedly recovered from the present applicant would not attract the bar under Section 37(1)(b) of the NDPS Act.

11. The prosecution, however, has invoked Section 29 of the NDPS Act, alleging that the present applicant is a part of a larger conspiracy involving co-accused Nos. 1 to 3 and one absconding accused, Javed Siddiqui, from whom substantial quantity of contraband was either recovered or connected. It is the case of the prosecution that the applicant acted as one of the links in the chain of procurement and supply, and that his disclosure led the police to Javed Siddiqui, from whose premises a mobile phone with alleged

chats and videos was recovered.

12. At this stage, it is necessary to bear in mind that Section 29 makes a person liable for conspiracy to commit offences under the NDPS Act. However, even in cases alleging conspiracy, the Court is required to examine whether there is prima facie material to connect the applicant with the recovery of commercial quantity, or if the allegations are vague and inferential. The mere fact that the co-accused were found in possession of commercial quantity cannot be mechanically used to deny bail, especially when the present applicant is not shown to be directly involved in procurement or possession of commercial quantity, and the material against him is largely circumstantial.

13. The reliance placed by the learned APP on the judgment of the Coordinate Bench in *Erum Mohamed Iqbal Bashey* (supra) is noted. However, the facts in that case were distinct, as the Court had found specific and direct material indicating the applicant's controlling hand in the entire narcotic transaction involving commercial quantity. In the present case, however, no recovery of commercial quantity is made from the applicant, and his complicity is sought to be established only on the basis of disclosure statements and mobile phone photographs, the evidentiary value of which shall be tested during trial.

14. It is also relevant to note that the charge-sheet has been filed, and investigation is complete. The applicant has been in custody since 30th April 2024. The trial is not likely to conclude in the immediate future.

15. The applicant is not shown to have played a dominant role in the actual procurement or financing of the contraband. While it may be true that he is implicated in one prior case under the NDPS Act, no conviction has been recorded. In the absence of any substantial material indicating habitual trafficking or prior convictions, bail cannot be denied solely on the basis of previous implication.

16. In light of the above, and considering that the quantity allegedly recovered from the applicant is non-commercial, the rigours of Section 37 NDPS Act are not attracted, the evidence is primarily documentary and recovery-based, the trial is likely to take time, and the applicant is in custody for nearly three months, this Court is of the considered view that the applicant deserves to be enlarged on bail, subject to stringent conditions to ensure his availability during trial and to prevent any further unlawful activity.

17. The applicant, Mohd. Hussain Shaikh @ Shivchand, shall be released on regular bail in connection with NDPS Special Case No. 752 of 2024, arising out of Crime Register No. 87 of 2023, registered with ANC, Azad Maidan Unit, for offences punishable under Sections 8(c), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his executing a personal bond in the sum of ₹50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties in the like amount, subject to the following conditions:

- (i) The applicant shall not tamper with the prosecution evidence or attempt to influence any witnesses in any manner.
 - (ii) The applicant shall not leave the jurisdiction of Mumbai without prior permission of the trial Court.
 - (iii) The applicant shall attend the trial Court on every date of hearing unless specifically exempted.
 - (iv) The applicant shall furnish his mobile number and residential address to the Investigating Officer, and shall inform the Investigating Officer and the trial Court in case of any change in the same.
 - (v) The applicant shall cooperate with the trial proceedings and shall not commit any offence of like nature during the pendency of the trial.
- 18.** If any of the above conditions are found to be violated, it shall be open for the prosecution to move for cancellation of bail.
- 19.** Bail application is accordingly disposed of.

(AMIT BORKAR, J.)