

Nikita

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

BAIL APPLICATION NO.986 OF 2025

Mohammad Aslam Mohammad
Merchant ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Subhash Hulyalkar a/w Mithilesh Mishra a/w A.
Patel i/b Hulyalkar and Associates for the Applicant.

Mr. T. G. Khan, APP for the State.

CORAM : ASHWIN D. BHOBE, J.

DATED : 9th JULY, 2025

P.C.:

1. Heard Mr. Subhash Hulyalkar learned Advocate for the Applicant and Mr. T. G. Khan, learned APP for the State.
2. Applicant, by the present application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, is seeking bail in connection with C. R. No. 263 of 2024 registered with Vishrantwadi Road Police Station, Pune for the offences punishable under Sections 8(c), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985. Said crime is now registered as Special Case No.153 of 2025 and is pending on the file of Special Court under NDPS Act Pune.
3. Case of the prosecution is that while patrolling, Shrinivas Santosh Godje and Rohit Shantaram Bhende were found in suspicious condition in front of HP Petrol Pump, Tingre Nagar

Pune. They were found in possession of 3.843 gms Mephedrone (MD). On inquiries, the said two persons disclosed the name of Nimish Abnave, who they claim was involved along with them in selling MD. Nimish Abnave was apprehended and was found in possession of 38.634 gms Mephedrone. Nimish Abnave disclosed the name of the Applicant.

4. Applicant was arrested on 16.08.2024, since then the Applicant is in jail. Bail Application at Exhibit-3, filed in Special Case No.153 of 2025 was dismissed by the learned Special Court under NDPS Act, Pune, on 15.02.2025.

5. Mr. Mithilesh Mishra, learned Advocate for the Applicant submits that the Applicant is pressing bail on the ground of the Applicant not being informed about the grounds of arrest. He clarifies by submitting that the Applicant was arrested on 16.08.2024, however, the Applicant was not furnished the grounds of his arrest. He therefore, submits that the arrest of the Applicant is illegal.

6. Mr. T. G. Khan, learned APP for the State, on instructions of the Investigation Officer Vishrantwadi Police Station, Pune, submits that grounds of arrest were not informed/ not furnished to the Applicant, at the time of his arrest.

7. I have perused the records with the able assistance of the learned Advocates for the parties.

8. Article 22 of the Constitution of India, confers a right on a person of being informed about the grounds of arrest. Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 requires the

person arrested to be forthwith communicated grounds of arrest, for which he is arrested.

9. As submitted by Mr. T. G. Khan, learned APP for the State, Applicant was not communicated of the grounds of arrest. Non furnishing of the grounds of arrest to the Applicant, has resulted in infringement of the fundamental rights of the Applicant conferred under Article 22 of the Constitution of India, as also violation of Section 47 of BNSS.

10. Non communication of the grounds of arrest to the Applicant has caused grave prejudice is caused to the Applicant and the same is contrary to the decisions of the Hon'ble Supreme Court in the case of Pankaj Bansal Vs. Union of India¹ and in the case of Prabir Purkayastha Vs. State of NCT of Delhi². I am bound by the law laid down by the Hon'ble Supreme Court as well as the sacrosanct principle contained under Article 22(1) of the Constitution of India.

11. In the case of Directorate of Enforcement Vs. Subhash Sharma in Special Leave Petition No.1136 of 2023 the Hon'ble Supreme Court in paragraph No.8 has observed as under:

“8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.”

12. In view of the above, arrest of the Applicant is illegal and,

1 (2023) SCC OnLine SC1244

2 (2024) SCC OnLine SC 934

therefore, the Applicant is entitled to bail.

13. Application is allowed on the following conditions:-

- a) Applicant is directed to be released on bail in connection with C. R. No. 263 of 2024 registered with Vishrantwadi Road Police Station, Pune on his furnishing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of Special Court under NDPS, Act, Pune.
- b) Applicant shall attend and regularly appear before the Special Court under NDPS, Act, Pune, in Special Case No.153 of 2025 on each date of hearing, unless specifically exempted by the Court.
- c) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing the facts to the Court or any police officer and shall not tamper with evidence.
- d) Applicant upon his release, within 3 days shall furnish to the Investigation Officer, Vishrantwadi Road Police Station, Pune his residential address with proof and the contact number and to keep the Investigation Officer intimated about the change in the same from time to time.

14. Bail Application No.986 of 2025 is allowed in the above said terms.

(ASHWIN D. BHOBE. J.)