

Rajput PR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1001 OF 2025**

Rashid Rafique Shaikh	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Ms Ashwinii Achari a/w Mr. Anish Pereira and Taraq Sayed,
for the Applicant.
Ms Poonam P. Bhosale, *APP for the Respondent - State.*
GPSI - M.B. Parab, Crime Branch (ANC), Thane, present.

CORAM DR. NEELA GOKHALE, J.
DATED: 15TH SEPTEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.827 of 2024 dated 15.11.2024 registered with the Hill Line Police Station, for the offences punishable under Sections 8(c), 20 (B) (ii) (d) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act').

2. The case of the prosecution as inferred from the FIR is that, a vigilant citizen brought to the notice of patrolling Police personnel that the Applicant was selling Ganja in that area. The Police patrolling party informed their seniors on telephone and got permission to take necessary action. It is alleged that there was a recovery of Ganja of 2 Kgs 130 Grams from the bag of the Applicant, pursuant to which the FIR was registered against him.

3. The Applicant made an Application before the Additional Sessions Judge, Sessions Court, Kalyan seeking bail. However, by order dated 14.02.2025, the said bail application was rejected. Hence, Applicant has filed the present Application for the relief as prayed.

4. Ms.Achari, learned counsel for the Applicant submits that Applicant is in custody for the past 11 months. According to her there is non-compliance of Section 42 (2) of the NDPS Act as the information was not reproduced in writing by the police. She points out there are two

antecedents against the Applicant. However, in C.R. No.297/2021 he has been enlarged on bail by order dated 28.04.2022 passed by the Sessions Court, Kalyan. The second case against him being C.R. No.359/2019 is also registered with the Hill Line Police Station for the offences punishable under Sections 8(c) read with Section 27 of the NDPS Act, for consumption of Ganja. Charge-sheet is filed but charges are not framed in the present case. In these circumstances, she states that since the recovery of ganja is of a non-commercial quantity, the bar under Section 37 of the NDPS Act does not apply and prays that Applicant may be released on bail.

5. *Per contra*, Ms. Bhosale, learned APP for the Respondent – State at the outset submits that he is a serial offender. He has two previous antecedents being registered against him. She also read out the statement of the Accused – Applicant whereby he himself has confessed that because he did not get any work during the Corona (Covid-19 Pandemic) he started earning some money by selling small quantities of

Ganja. She further submits that co-accused is still absconding and if the Applicant is released on bail he is likely to alert the co-accused. She thus, prays that bail application be rejected.

6. I have heard Ms.Achari, learned counsel for the Applicant and Ms.Bhosale, learned APP for the Respondent – State and with their assistance perused the record of the case.

7. Admittedly, recovery of Ganja of 2 Kgs and 130 grams is not of commercial quantity and therefore the rigours of Section 37 of the NDPS Act will not apply.

8. The charge-sheet is filed on 11.01.2025. Despite the charge-sheet being filed on 11.01.2025, charges are yet not framed. It appears unlikely that the trial will progress substantially in the foreseeable future. The Applicant has already been granted bail by the Sessions Court in the previous C.R. It is settled law that an accused cannot be denied bail just because a co-accused has absconded or has

not surrendered. In these circumstances, this is a fit case for grant of bail.

9. Application is therefore, allowed and it is directed as under:

ORDER

i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;

ii) The Applicant shall attend the trial Court concerned on each and every date unless exempted by the orders of the trial Court concerned; Applicant shall also attend the Police Station once in a 15 days between 11:00 a.m. to 02:00 p.m.;

iii) If the Applicant has not deposited the passport, the Applicant shall deposit the same with the concerned Police Station;

iv) The Applicant shall not leave India, without the permission of the trial Court;

v) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vi) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vii) The Applicant to co-operate with the conduct of the trial; and

viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail;

ix) Any infraction of the aforesaid conditions shall entail cancellation of bail.

10. Application is allowed in the above terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(DR. NEELA GOKHALE, J)