

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1029 OF 2025

Haseeb Hanif Ibrahim	Applicant
	.. (Accused No.3)
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1004 OF 2025**

Anwar Ali Abid Ali Khan	Applicant
	.. (Accused No.4)
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 5376 OF 2024**

Muhibbul Haq Ziaul Haq Khan	Applicant
	.. (Accused No.2)
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Aamir H. Koradia a/w. Mr. Zaki Ahmed Shaikh and Misba Loladia, Advocates for Applicant in Bail Application No.1029 of 2025.
 - Mr. Rajendra Rathod a/w. Mr. Umar Dalvi and Mujtaba Shaikh, Advocates for Applicant in Bail Application No.1004 of 2025.
 - Mr. Taraq Sayed a/w. Ms. Ruchika Ghag and Ms. Rashi Maknikar, Advocates for Applicant in Bail Application No.5376 of 2024.
 - Mr. R.M. Pethe, APP for Respondent – State in Bail Application Nos.1029 of 2025 and 1004 of 2025.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State in Bail Application No.5376 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 25, 2025.

P.C.:

1. Heard Mr. Koradia, learned Advocate for Applicant in Bail Application No.1029 of 2025; Mr. Rathod, learned Advocate for Applicant in Bail Application No.1004 of 2025; Mr. Sayed, learned Advocate for Applicant in Bail Application No.5376 of 2024; Mr. Pethe, learned APP for Respondent – State in Bail Application Nos.1029 of 2025 and 1004 of 2025 and Mr. Karmakar, learned APP for Respondent – State in Bail Application No.5376 of 2024.

2. These Applications under Section 439 of the Code of Criminal Procedure, 1973 seek Regular Bail in connection with C.R.No.7 of 2024 registered with Anti-Narcotics Cell, Bandra Unit, Mumbai for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’).

3. This is a group of 3 Bail Applications filed by 3 Accused persons namely Accused Nos.2, 3 and 4 in connection with the same crime. All Bail Applications are disposed of by this common order. Accused No.2 has filed Bail Application No.5376 of 2024; Accused No.3 has filed Bail Application No.1029 of 2025 and Accused No.4 has filed Bail Application No.1004 of 2025. There are in all 7 Accused persons in the crime. Accused Nos.1, 5 and 6 have already been enlarged on bail. Accused No.1 was found with intermediate quantity

of the alleged contraband Mephedrone (MD) whereas Accused No.5 and 6 were found with commercial quantity of the alleged contraband despite which they have been enlarged on bail. Date of arrest of all 7 Accused persons is from different locations on 25.01.2024. Alleged date of incident is in the intervening night of 24.01.2024 and 25.01.2024.

4. According to prosecution case stated in the seizure panchnama, on receiving specific information search and seizure began on 24.01.2024 at 21:00 hours and ended on 25.01.2024 at 01:45 hours during which time 7 Accused persons were apprehended and arrested with the alleged contraband from their conscious possession from 5 different locations in Mumbai. The First Information Report (FIR) was lodged at 05:10 a.m. on the early morning on 25.01.2024.

5. *Prima facie* it is seen that Accused No.2 was apprehended with 155 grams of MD, Accused No.3 was apprehended with 75 grams of MD and Accused No.4 was apprehended with 475 grams of MD.

6. Learned Prosecutors have vehemently argued that if the total amount of seized contraband from all 7 Accused is considered, it would be in excess of 1 kilogram of the alleged contraband MD and therefore their case would be amenable to the rigours of Section 37 of the NDPS. That apart, they would submit that all Accused persons were constantly in touch with each other on their respective mobile

phones which is apparent from the CDRs placed on record. They would submit that if the same are seen, it would be evident that apart from the Accused persons being in constant touch and having made hundreds of calls to each other immediately prior to their arrest, as also supported by certain bank entries pertaining to certain amounts in the bank account on some of the Accused persons namely Applicants before the Court, *prima facie* case against Applicants for trafficking of alleged contraband is made out and therefore they should be denied bail.

7. From the record of the case, it is *prima facie* seen that Accused Nos.1 and 2 were apprehended together at 08:30 p.m. on 24.01.2024 by prosecution officers. Reading of the seizure panchnama further reveals that when Accused Nos.1 and 2 were apprehended by raiding party, Sub-Inspector Gaikwad immediately called for police Inspector Mr. Chavan to come on the incident spot at Grant Road so that search can be carried out by the Statutory Officer. The same seizure panchnama however states that at 09:00 p.m. raiding party of the prosecution officers reached Bandra for apprehending the other Accused persons which is practically impossible.

8. Thereafter it is seen that panchnama of search, seizure from Accused Nos.1 and 2 began at 09:00 p.m. and ended at 09:55 p.m.. However, the same raiding party officers thereafter left Grant road and

headed towards Tarabagh Mazgaon to apprehend and arrest Accused No.3 presumably on the disclosure of Accused Nos.1 and 2. From the panchnama, it is seen that search, seizure and arrest of Accused No.3 ended at 10:45 p.m.. However, no specific time of apprehending Accused No.3 and when the panchnama commenced has been mentioned in the seizure panchnama. Similar is the case with respect to Accused No.4. It is seen that Accused Nos.4 and 5 were apprehended at Nagpada, another distant location and once again the time on which Accused Nos.4 and 5 were apprehended is not mentioned in the seizure panchnama. It is only stated that panchnama relating to Accused Nos.4 and 5 ended at 11:55 p.m.. Thereafter it is seen that the raiding party officers then headed towards Agripada area and apprehended Accused Nos.6 and 7 from there. Once again the time is not mentioned, save and except it is stated that their panchnama ended at 01:45 a.m.

9. The Section 50 appraisal letters given to Applicants arraigned as Accused Nos.2, 3 and 4 before me are appended at page Nos.71, 72 and 73 of the Application. Considering that Accused persons have been apprehended on the basis of disclosure made by the co-accused persons in the present case which is evident from the seizure panchnama itself, the time of their apprehension, search, seizure and arrest are not stated in any of the record including the appraisal letter which has been given to them neither in the seizure

panchnama which is a must since according to prosecution argument there was no time to record their respective statements. Considering that this is the case where the prosecution is relying upon a continuous panchnama being carried out for apprehending and arresting 7 Accused persons alleged to be trafficking in contraband from 5 different places, it is imperative for the prosecution to ensure that the provisions of the NDPS Act are scrupulously followed otherwise the case of the prosecution stands vitiated at the threshold itself.

10. Applicant in Bail Application No.5376 of 2024 i.e. Accused No.2 is a business man by profession and owns a salon with Accused No.3 who is his business partner. It is the case of Applicant that on the intervening night between 24.01.2024 and 25.01.2024 between 09:00 – 09:30 p.m., Accused No.3 was waiting alone to meet his business partner at Grant Road when a group of individuals approached him and interrogated him about his presence and revealed that they were officers of ANC, Bandra Unit and they were conducting their regular drills.

11. It is the case of Accused No.3 is that he does not even know Accused No.1 and has no nexus or connection with him. However, prosecution case is that Accused Nos.1 and 2 were both apprehended together at the incident spot at Grant Road and then Accused No.1 revealed the names of Accused Nos.3 and 4. Accused No.3 has also

stated that in so far as possession of any contraband is concerned, no contraband whatsoever was found in his possession and all that the concerned officer informed him was to call his business partner namely Accused No.3 and when he arrived both Accused Nos.2 and 3 were taken into custody and shown to possess contraband.

12. Mr. Sayed, learned Advocate for Accused No.2 would vehemently submit that even if the bank transactions of parties relied upon by prosecution in support are seen, *prima facie* it would be evident that the average amounts of transactions is between Rs.1,000/- to Rs.1,500/- and only a mere 6 out of the total 72 transactions are over Rs.5,000/- which *prima facie* make it clear that such amounts cannot be used for the purpose of buying/selling narcotic drugs such as the alleged contraband MD which according to him is alleged to be priced at Rs.2,00,000/- per 10 gram. He would submit that considering the profession of Accused Nos.2 and 3 who are business partners and run a salon in Bandra named and styled as 'Hair Art by Haseeb Ibrahim', the bank entries *prima facie* show the payments which they have received with respect to their business income from the salon business and nothing more. He would also submit that Accused No.4 and present Accused No.2 have been childhood friends belonging to the same native place from Jamda Shahi, Uttar Pradesh.

13. In so far as Accused No.4 is concerned, Advocate Mr. Rathod would submit that he is a travel agent by profession and does not have any criminal antecedents to his discredit.

14. Equally, Mr. Koradia, learned Advocate for Accused No.3 would submit that there is no distinction in the case between Accused Nos.2 and 3 in the facts of the case and they have been falsely implicated in the present crime.

15. I have heard Mr. Koradia, learned Advocate for Applicant in Bail Application No.1029 of 2025; Mr. Rathod, learned Advocate for Applicant in Bail Application No.1004 of 2025; Mr. Sayed, learned Advocate for Applicant in Bail Application No.5376 of 2024; Mr. Pethe, learned APP for Respondent – State in Bail Application Nos.1029 of 2025 and 1004 of 2025 and Mr. Karmakar, learned APP for Respondent – State in Bail Application No.5376 of 2024 and with their able assistance perused the record of the case.

16. After perusing the material on record, it is *prima facie* seen that Accused persons have been arrested solely on the basis of the alleged disclosure statement made by the other co-accused persons. The disclosure in the present case is made by the previous Accused person and it has been made in such a manner that within a span of 3 hours the raiding party has managed to arrest 7 persons from 4 to 5 different locations in Mumbai. The said disclosure statements have not

been recorded.

17. At the threshold it is seen that case of prosecution is that Accused Nos.1 and 2 were both arrested together at the same spot. If that be the case then it is intriguing and equally surprising that Section 50 appraisal given to Accused Nos.1 and 2 which are appended at page No.70 and 71 of Bail Application No.5376 of 2024 *prima facie* appear to be different. This is so because the endorsement which is made by Accused No.2 on his appraisal letter is absent on the appraisal letter of Accused No.1. The explanation given by the learned prosecutor is that Accused Nos.1 was unable to read and right and therefore as stated in the seizure panchnama he was explained the consequences of the appraisal letter given to him about his right of being searched. The said submission cannot be comprehended considering that Accused No.1 has effected and endorsed his signature in English on the appraisal letter.

18. If it is the prosecution case that both Accused Nos.1 and 2 were apprehended at the same time, then the aforesaid discrepancy ought not to have happened. The prosecution case therefore stands *prima facie* vitiated.

19. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial.

There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“37. Offences to be cognizable and non-bailable:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

20. From reading of Section 37 of the NDPS Act, it becomes clear that the legislature intends to deny bail to accused alleged to be in

possession of commercial quantity of contraband in absence of court subscribing to a contrary view, however therefore if seen it does not rule out the facet of discretion of Court to grant bail. Furthermore the Court must be satisfied that the accused is unlikely to re-offend. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. In such cases, if we look realistically the provisions of Section 37 leave limited room for a possibility of granting bail to the accused. However employing such limitation would create a dichotomy in the current scenario where one common grievance is made before this Court repeatedly in matter after matter. It is brought to the notice of the Court that trials are taking perpetuity to be concluded and prisons are also simultaneously overcrowded in some segments.

21. In view of the above *prima facie* observations and findings as also considering the ground of parity for the present Applicants with the 3 other Accused persons who have already been enlarged on bail, I am of the opinion that Applicants can be released on bail.

22. Hence, all 3 Bail Applications are allowed subject to the following terms and conditions:-

- (i) All three Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;

- (ii) 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;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) 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, Applicants shall mark presence on the next working day;
- (v) 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;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and/or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

23. 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.

24. All Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

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