

Amberkar

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

CRIMINAL BAIL APPLICATION NO.556 OF 2025

Rohit Suresh Gosavai .. Applicant
Versus
Union of India and Anr. .. Respondents

**WITH
CRIMINAL BAIL APPLICATION NO.1048 OF 2025**

Asma Samir Shaikh @ Asma Irfan Rafiq Shaikh .. Applicant
Versus
Union of India and Anr. .. Respondents

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- Mr. Anil G. Lalla a/w Ms. Rithika Yerra, Mr. Yash Pulekar and Ms. Ankita Rathod, Advocates for the Applicant in BA 556 of 2025.
 - Mr. Atul Sarpande, Advocate for Applicant in BA 1048 of 2025.
 - Ms. Neha Patil, APP for Respondent No. 1 - NCB.
 - Mr. Balran B. Kulkarni, APP for Respondent No.2

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 30, 2025

P. C.:

1. These two Bail Applications are filed under Section 483 of B.N.S.S.¹ seeking regular bail in connection with NDPS SPL CASE No.1694 of 2024 pending before NDPS Special Judge, Sessions Court, Fort, Mumbai. Applicant in BA 556 of 2025 is arraigned as Accused No.2 in the Chargesheet. Applicant in BA 1048 of 2025 is arraigned as Accused No.3 in the Chargesheet. They, along with other co-accused

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023.

have been alleged to have committed offences under Section 8(c) r/w 22(c), 27A, 28 and 29 of NDPS Act².

2. The case of the prosecution is that on 27.08.2024, an Inspector of NCB received Specific Intelligence Information that a person namely Varun Tiwari (Accused No.1), aged about 21 years, resident of Nashik is coming to Mumbai on the early morning of 28.02.2024 for taking delivery of approximately 150 grams of Mephedrone from a person named Zameer Ansari, a resident of Jogeshwari, Mumbai. It was also stated in the Specific Intelligence that Varun Tiwari would collect the contraband and return back to Nashik immediately in a red colored Swift Dezire vehicle bearing registration No. MH 15 GF 1314 which would be crossing Anand Nagar Toll Naka, Mulund at about 0080-0090 hrs.

2.1. Based on the Intelligence, a team of NCB was constituted which intercepted the car driven by Accused No.2 (Applicant in BA 556 of 2025) and Accused No. 1 along with one more occupant Kalpesh Patil (who is not arraigned as accused in the chargesheet).

2.2. The Officer inquired with Accused No. 1 who himself handed over a zip lock pouch containing 145 grams of MD stacked in the hand break cavity of the said vehicle. He revealed that he purchased the said contraband from one Zameer Ansari and Irfan Rafiq Shaikh

² The Narcotic Drugs And Psychotropic Substances, Act, 1985.

(Accused No.4). Accused No. 1 and Accused No. 2 were arrested on the same day i.e. 28.02.2024.

2.3. Based upon disclosure of Accused No.1, NCB proceeded to apprehend Accused No.4 at his Flat No.1103, E wing, near Galaxy Building, Kurla, Mumbai. The flat was found to be occupied by Asma Samir Shaikh (Accused No.3 and Applicant in BA 1048 of 2025) who is the wife of Accused No.4. During search in the flat, NCB recovered a jute bag and a plastic container containing currency amounting to Rs. 13,19,200/- and 1,50,000/- respectively. It was disclosed by Accused No.3 that currency in the plastic container was proceeds of sale of contraband sold on that day by her and her husband. NCB team recovered a zip lock bag containing a white colored substance weighing about 270 gm. from the kitchen hall of the flat. Upon inquiry, Accused No.3 disclosed that the substance was Mephedrone (MD). That apart, NCB team recovered 208.85 grams of gold valued at Rs.11,74,850/-. Panchanama was concluded at 21:10 hrs on 28.02.2024 and Accused No.3 was arrested on 29.02.2024 at 12:00 hrs. Accused No.4 was arrested on 30.03.2024.

3. Mr. Lala, learned Advocate appears on behalf of Applicant (Accused No. 2) in B.A. 556 of 2025.

3.1. He would at the outset submit that Applicant is innocent and falsely implicated by prosecution. He would submit that the seized contraband was recovered from possession of Accused No.1 who had concealed it in the hand brake cavity of the car. He would submit that Applicant, being a driver had borrowed the vehicle on hire from his friend at the behest of Accused No. 1 on being paid an amount of Rs. 1500/- for the trip to drive the vehicle to and fro from Nashik to Mumbai and had no knowledge about any contraband being concealed in the vehicle.

3.2. He would submit that plain reading of statements of the car-owner Nikhil Pawar and Co-passenger Kalpesh Patil would indicate that Applicant had no role to play in commission of the alleged offence just like Kalpesh Patil who is let off.

3.3. He would submit that name of Applicant was not disclosed in the Intelligence Information Note and it was only Accused No.1's name whose name had featured in the Information.

3.4. He would next submit that on the ground of parity since Accused No.1 and Accused No.4 have been released on bail despite their alleged role being more than that of Applicant, present Applications deserve to be allowed.

3.5. He would submit that there is no incriminating material found against Applicant and the only ground on which case of prosecution hinges upon is statement of accused recorded under Section 67 of NDPS Act which is hit by Section 25 of the IEA³ or corresponding *pari material* provisions of BSA⁴.

3.6. He would submit that Applicant has no antecedents and is incarcerated for a period of 1 year and 2 months pending trial and would pray for him to be enlarged on bail.

4. Mr. Sarpande, learned Advocate appears on behalf of Applicant (Accused No. 3) in BA 1048 of 2025.

4.1. He would submit that the Applicant is innocent and falsely implicated in the case.

4.2. He would submit that although arrest is shown at 12:00 hrs on 29.02.2024, liberty of Applicant was curtailed at the time of closure of panchanama i.e. at 21:10 hrs which ought to be construed as time of her effective arrest and thus it is in gross violation of provisions of Cr.P.C. which disallows arrest of a woman between sunset and sunrise save in case of exceptional circumstances after obtaining prior requisite approval from the Magistrate which was not the done in the instant case.

3 Indian Evidence Act, 1872.

4 Bharatiya Sakshya Adhiniyam, 2023

4.3. He would submit that her own statement under Section 67 of NDPS Act is the only incriminating material asserted by prosecution which is hit by the provisions of Section 25 of IEA or corresponding provisions of BSA.

4.4. He would submit that the alleged recovery was made from a premise that does not even belong to Applicant as it belongs to Accused No. 4 who is her husband and has been let off on bail.

4.5. He would submit that Applicant has no antecedents and is incarcerated for a period of more than 1 year and 2 months awaiting trial. He would pray for her Application to be allowed.

5. **PER CONTRA** Ms. Patil, learned APP would vehemently oppose grant of Bail to Applicants. She would submit that Accused No. 2 was driving the vehicle from which the contraband was recovered. She would submit that it is improbable that Accused No.1 would conceal the contraband in the hand brake cavity of the vehicle without the knowledge of the driver i.e. Accused No.2.

5.1. Insofar as role of Accused No.3 is concerned, she would submit that she was residing in the premises from where huge sum of cash, ornaments and commercial quantity of MD was recovered. She would submit that Accused No.3's own confessional statement indicates that cash recovered from the premises was proceeds from sale of

contraband substance MD and the same is corroborated by recovery of commercial quantity of contraband from the kitchen of the said premises.

5.2. She would submit that since commercial quantity of contraband is recovered from the premises, rigors of Section 37 of NDPS Act is triggered and would state that both Applicants have failed to satisfy the stringent conditions of Section 37 *prima facie* and would thus pray for rejection of both Applications.

6. I have heard the learned Advocates at the bar and with their able assistance, perused the record of the case.

7. The encapsulation of the prosecution case against Accused No.2 is that he was driving the vehicle (car) in which contraband was concealed. It is seen that Applicant was engaged as driver to drive the vehicle to and fro from Nashik to Mumbai for a gain of Rs.1,500/-. It is an admitted fact that he did not own the vehicle as per the vehicle owner's statement.

7.1. Prosecution asserts that it is inconceivable that contraband is concealed in the handbrake cavity of a car without knowledge of the driver. Applicant – Accused No.2 asserts that it was Accused No.1 who concealed the contraband while he and the other co-passenger Kalpesh Patil had taken a break. Complaint filed before the NCB SPL Court also

states that it was Accused No.1 who was named in the secret information and who handed over the contraband to the officials.

8. Accused No.3 is indicted as she was occupying the house of Accused No.4 who was named as supplier by Accused No. 1 of contraband recovered from the car. Prosecution relies on her confessional statements to corroborate their claim that she was also involved in the crime. It is pertinent to note that it was Accused No.4 who was named by Accused No.1. Officials of NCB reached the house premises of Accused No.4 which was found to be occupied by his wife, Accused No.3 along with her two minor children aged 7 and 4 years old. She is not the owner of the premises. Her only misfortune is that she was found residing in the flat.

9. In the above facts it appears *prima facie* that indictment of both Applicants is solely on the basis of circumstantial evidence. Both Applicants share one commonality, they are accused of conspiracy. What is engaging in the present case is that both accused Nos. 1 and 4 who were named by either the Intelligence Input Information or the co-accused which led to recovery are released on bail. Their role is on a much higher footing than present Applicants yet they are enlarged on bail. The occupant of the car Kalpesh Patil is not arraigned as accused which is a material circumstance. Applicants have been in incarceration for over one year and two months. Their complicity can

be proved at the stage of trial. Their further custody is unwarranted in the above circumstances.

10. In view of the above *prima facie* observations, both Applications are allowed in terms of prayer clause (a) subject to the following terms and conditions:-

(i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each with one or two sureties in the like amount;

(ii) Both Applicants are permitted to furnish provisional cash bail of Rs. 15,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs. 15,000/- each within a period of four weeks after their release which shall be accepted by the Trial Court. Applicants shall provide sureties as directed;

(iii) Before their actual release from jail, both Applicants shall furnish their respective address where they propose to reside after their release from jail to the concerned authorities and also to the trial Court;

(iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;

- (v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark their presence on the next working day;
- (vi) 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;
- (vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (ix) 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.

11. 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.

12. Bail Application No.556 of 2024 and Bail Application No.1048 of 2024 are allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]