

AGK

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

BAIL APPLICATION NO.1394 OF 2025

Arif Abdul Gaffar Shaikh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Anish Pereira with ms. Ashwini Achari and Mr. Taraq Sayed for the applicant.

Mrs. Mahalakshmi Ganapathy, APP for the respondent-State.

Mr. Prakash Sawant, PSI, ANC Crime Branch, Worli Unit, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 7, 2025

P.C.:

1. By the present application filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS”), the applicant is seeking regular bail in connection with Special Case No. 821 of 2021, which arises out of Crime Register No. 09 of 2021 registered with ANC, Worli Unit Police Station, Mumbai. The applicant has been booked 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 “NDPS Act”).

2. As per the case of the prosecution, on 19th January 2021, specific information was received by the Anti-Narcotics Cell (ANC),

Worli Unit, that a person by the name of Mohammad Arif Shaikh, aged about 42 to 45 years and approximately 6 feet 6 inches in height, having a fair complexion and medium build, wearing blue jeans and a black-and-green check shirt, would arrive between 13.30 to 14.00 hours near the gate of Vasant Dada Patil Udyan, Sane Guruji Marg, Tardeo, Mumbai, for the purpose of selling Mephedrone (MD) to his clients.

3. Acting upon the said information, a team of ANC officers reached the spot. At the stated location, they noticed a person matching the given description behaving in a suspicious manner. He was immediately approached and apprehended by the officers. Upon preliminary inquiry, he disclosed his name as Mohammad Arif Abdul Gaffar. Two independent panch witnesses were summoned on the spot. The accused was informed of his legal right under Section 50 of the NDPS Act, and thereafter, his personal search was carried out in the presence of the panchas.

4. At the time of apprehension, the applicant was found holding a black-coloured phlythebe bag in his right hand. Upon inspection, the said bag was found to contain white powder, which on preliminary examination appeared to be a narcotic substance. Further chemical testing revealed that the substance was Mephedrone (commonly known as MD), weighing a total of 1 kilogram and 105 grams. On the basis of this seizure, the First Information Report (FIR) came to be registered against the applicant.

5. Learned Advocate for the applicant submitted that the

applicant has been under incarceration since 19th January 2021, the date of his arrest. He pointed out that though the charges in the case have been framed only recently, in July 2024, not a single witness has been examined till date. It was further submitted that the prosecution has listed 10 witnesses, and in such circumstances, the completion of trial in the near future appears highly unlikely. On this basis, the learned counsel urged that the continued custody of the applicant amounts to a violation of his fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India. Therefore, he prayed that the applicant be released on bail.

6. In support of his contentions, the learned Advocate relied upon various decisions of the Hon'ble Supreme Court wherein bail was granted on the ground of prolonged undertrial incarceration. He specifically placed reliance on:

- a) *Vijay Singh vs. Union of India*, SLP (Cri.) Diary No. 43071 of 2024,
- b) *Ibabor Ali Mondal vs. State of West Bengal*, SLP (Cri.) No. 7383 of 2024,
- c) *Ankur Chaudhary vs. State of Madhya Pradesh*, SLP (Cri.) No. 4648 of 2024,
- d) *Sukhwinder Singh @ Bittu vs. State of Punjab*, SLP (Cri.) No. 883 of 2024,
- e) *Rabi Prakash vs. State of Odisha*, SLP (Cri.) No. 4169 of 2023, and
- f) *Hasanujjaman & Ors. vs. State of West Bengal*, SLP (Cri.) No. 3221 of 2023.

7. In all these cases, the Supreme Court granted bail considering the long delay in commencement and completion of

trial.

8. On the other hand, the learned APP opposed the bail plea, contending that the delay in the present case is not due to inaction on the part of the prosecution or the Court, but rather is a result of repeated adjournments sought by the accused themselves. It was pointed out that though charges were framed on 18th June 2024, Accused No.2 challenged the said order by filing Criminal Revision Application No.542 of 2024. This Court, by order dated 30th September 2024, remanded the matter back to the Special Judge for re-framing of charges.

9. Thereafter, the co-accused moved an application under Section 294 of the Cr.P.C. On 11th October 2024, the present applicant also filed a bail application before the Special Judge. On 3rd December 2024, the matter was again listed for framing of charge. However, instead of proceeding with the charge, the learned Advocate for Accused No.2 filed another bail application. The Special Judge, while allowing the exemption application of the said accused, observed that the exemption was granted only as a last chance and adjourned the trial.

10. On 3rd December 2024, when the matter was taken up, the learned Advocate for the accused was absent. The matter was adjourned to 15th January 2025. On that date, Accused No.2 was absent and hence a production warrant had to be issued. The roznama dated 10th February 2025 shows that even on the date fixed for hearing the bail application, the learned Advocate for the present applicant remained absent. Only on 13th March 2025 was

the bail application finally argued. The said application was rejected on 20th March 2025, and the matter was then listed for hearing on charge on 19th April 2025. However, on that date, a discharge application was moved by the co-accused, thereby further delaying the progress of the trial. The arguments on the discharge application were heard on 15th July 2025, and the matter is now adjourned to 19th September 2025.

11. In the backdrop of the aforesaid sequence of events, it is evident that the delay in commencement of trial is largely attributable to the conduct of the accused themselves. Filing of multiple applications, repeated absence of advocates, and other procedural manoeuvres have cumulatively caused the delay. Hence, the applicant cannot be permitted to take advantage of such delay to seek bail. Accordingly, this Court is of the view that no case is made out for grant of bail at this stage. The bail application, therefore, stands rejected.

12. Upon considering the rival submissions and the material placed on record, this Court is not inclined to grant bail to the applicant for the following reasons:

i. Nature and seriousness of the offence:

13. The applicant is facing prosecution for offences punishable under Sections 8(c) read with 22(c) and 29 of the NDPS Act. The contraband allegedly seized from the applicant is Mephedrone (MD), weighing 1 kg and 105 grams, which falls under the category of *commercial quantity*. As per the settled position of law, offences involving commercial quantity of narcotic drugs are to be

treated with seriousness, keeping in view the impact on society at large. The rigour of Section 37 of the NDPS Act squarely applies in the present case.

ii. Bar under Section 37 of the NDPS Act:

14. In terms of Section 37(1)(b)(ii) of the NDPS Act, before bail can be granted in such cases, the Court must be satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence and that he is not likely to commit any offence while on bail. In the present case, the recovery of a large quantity of contraband at the instance of the applicant, as recorded in the panchnama and supported by the chemical analysis report, prima facie indicates involvement of the applicant. At this stage, the Court cannot reach the satisfaction required under Section 37 to grant bail.

iii. Delay in trial not attributable to prosecution:

15. Although it is true that the applicant has been in custody since January 2021 and that, till date, no prosecution witness has been examined, a closer scrutiny of the record reveals that the delay in commencement of trial is not solely due to the prosecution or the Court. On the contrary, the sequence of events clearly reflects that a substantial part of the delay is attributable to the conduct of the accused themselves.

16. It is seen from the roznama and proceedings of the trial court that multiple applications have been filed by the accused and co-accused at different stages, including bail applications, exemption applications, a revision petition challenging the framing

of charge, and subsequently, a discharge application. Each of these filings resulted in adjournments and prolonged the procedural timeline of the trial.

17. Furthermore, on several occasions, the advocates representing the accused were not present when the matter was called out, leading to further postponements. There were also instances where the accused themselves remained absent before the trial court, thereby compelling the court to issue production warrants. In one such instance, the Special Judge even noted that the exemption granted was being misused and allowed it only as a “last chance.”

18. Thus, it cannot be said that the delay in progress of the trial is on account of the prosecution alone. In fact, a pattern of conduct emerges from the record that shows that the accused persons, including the present applicant, have repeatedly sought adjournments or caused delay through procedural steps and absence, whether personal or through counsel. Therefore, the claim of prolonged incarceration or violation of the right to speedy trial under Article 21 of the Constitution cannot be pressed into service by the applicant when the delay is largely a result of his own conduct.

19. Courts have repeatedly held that a litigant cannot take advantage of a situation caused by his own actions. In this view of the matter, the ground of delay, when not attributable to the prosecution, does not in itself justify the grant of bail, particularly when serious offences under the NDPS Act involving commercial

quantity are concerned.

iv. No exceptional circumstances for release:

20. The applicant has not brought on record any exceptional or compelling circumstance that would warrant departure from the strict parameters laid down under Section 37 of the NDPS Act. The right to speedy trial, no doubt, flows from Article 21 of the Constitution of India, but when the delay is due to the acts of the accused, the said right cannot be invoked in their favour. The decisions cited by the learned counsel for the applicant are distinguishable on facts, as in those cases, the delay was unexplained or attributable to the prosecution.

v. Possibility of tampering or absconding not ruled out:

21. Considering the nature of allegations, seriousness of the offence, and quantity of contraband involved, it cannot be ruled out that the applicant, if released on bail, may abscond or may tamper with the evidence or attempt to influence witnesses, thereby obstructing the fair conduct of the trial.

22. In view of the above discussion, and particularly keeping in mind the bar under Section 37 of the NDPS Act and the applicant's role in the alleged offence involving commercial quantity, no case is made out for grant of bail. The application is, therefore, liable to be rejected.

23. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)