

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1497 OF 2025

Geeta Uday Swami

.. Applicant

Versus

The State of Maharashtra

.. Respondent

-
- Mr. Jogendra Thakur, Advocate for Applicant.
 - Ms. Shilpa K. Gajare – Dhumal, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2025.

P.C.:

1. Heard Mr. Thakur, learned Advocate for Applicant and Ms. Gajare - Dhumal, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.229 of 2023 registered with Tulinj Police Station for the offences punishable under Section 22(c) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

3. On 17.04.2025, after hearing Mr. Thakur, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP, the following order was passed:-

“1. Heard Mr. Takar, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent.

2. Applicant is a woman who is incarcerated for past more than 2 years in offences punishable under provisions of the

Narcotics and Psychotropic Substances Act, 1985 (for short 'NDPS Act') for having been apprehended and arrested alongwith 80 grams of alleged contraband namely Mephedrone which according to prosecution case has been recovered from left pocket of the gown that she was wearing.

3. There are several transgressions argued by Mr. Takar which on going through the record of the case are prima facie borne out. Principal transgressions are that of arrest of Applicant.

4. She was given an appraisal letter under Section 50 of the NDPS Act. Copy of the same is appended at page No.89 of the Application. The said letter does not bear the signature of the witnesses and as such prima facie becomes a suspect. The seizure panchnama prima facie shows that Applicant was apprehended and arrested between sunset and sunrise but most importantly at the time of search there was a male constable present which once again is a transgression of procedural statutory law which prosecution needs to explain.

5. Though Applicant is apprehended with commercial quantity of the alleged contraband and rigours of Section 37 would apply is what prosecution may argue but prosecution may say so only if prosecution follows the procedure established under the NDPS Act.

6. That apart, during sampling and certification of the alleged contraband prima facie transgression is observed by the Court. The prosecution needs to answer the above issues, as also inform the Court the status of trial since incarceration of Applicant is for more than 2 years 1 month in the present case which would entitle the Applicant to be enlarged on bail on the ground of long incarceration.

7. Applicant has no criminal antecedents and prima facie there is no certainty that trial will commence since charge has also not been framed till date.

8. Prima facie case is made out for bail by the Advocate for Applicant. Advocate for Applicant relies upon decisions of the Court in support of his case in the following cases:-

- (i) Mohd. Muslim A Hussain Vs. State (NCT of Delhi)¹;*
- (ii) Rabi Prakash Vs. The State of Odisha²; and*
- (iii) Naziya Rabiul Islam @ Shobha Devdas Mondol Vs. The State of Maharashtra³.*

9. Learned APP shall take cognizance of the above

¹ 2023 LiveLaw (SC) 260 (Criminal Appeal No(s). of 2023 [@ Special Leave Petition (CRL) No(s). 915 of 2023 decided on 28.03.2023).

² 2023 LiveLaw (SC) 533 [Special Leave to Appeal (Crl.) No(s).4169/2023 decided on 13.07.2023.]

³ Bail Application No.487 of 2024 decided on 08.02.2024.

submissions and accordingly apprise the Court on the next adjourned date. It is clarified that if prosecution does not come with any instructions on the next date on the above issues which have been noted by the Court emanating from the record, Applicant shall be granted bail. If matter reaches after 04:30 p.m., learned APP is directed by the Court to remain present. If learned APP is not present, Application shall still be decided on its own merits.

10. *Stand over to 24th April, 2025.”*

4. On perusal of page No.89 which is appraisal letter issued under Section 50 of the NDPS Act, it is *prima facie* seen that the said letter does not bear the signature of the Accused. There is transgression of the provisions of sub-section 2 of Section 42 of the NDPS Act also as argued. Case of Applicant is *prima facie* covered by the decisions of this Court which are delineated in the above order. Considering the fact that there is apparent and *prima facie* transgression of the statutory provisions and long incarceration of the Applicant for more than 2 years and 1 month in prison and Applicant being a woman and most importantly when the record is seen the Applicant was arrested between sunset and sunrise and there was a male constable present who apprehended her, Applicant has made out a case for grant of bail.

5. ***PER CONTRA***, Ms. Gajare – Dhumal, learned APP appearing for the State would oppose the Application for grant of bail. She would submit that apparent transgression of statutory provisions as argued by the learned Advocate for Applicant may be treated as technical abberations as the prosecution has undoubtedly proven the complicity

of Applicant in the crime for handling the alleged contraband at the time of trial. She would persuade the Court to consider the Application of rigours of Section 37 of the NDPS Act, the Bail Application of the Applicant be rejected. However in her usual fairness she would submit that the appraisal letter issued under Section 50 of the NDPS Act in this case does not have the signatures of the panchas.

6. In view of my above *prima facie* observations, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for her release immediately and file undertaking that she will provide one or two sureties in the like amount of Rs.15,000/- within a period of four weeks after her release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before her actual release from jail, Applicant shall furnish her address where she proposes to reside after her release from jail to the concerned Police Station and also to the trial Court;

- (iv) After her release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark her presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant 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 she does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence 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.

7. 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.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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