

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1599 OF 2025

Arbaz Hamid Khan	... Applicant
V/s.	
State of Maharashtra	... Respondent

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Mr. Atul Sarpande with Mr. Nilesh Bangar & Mr.
Kamlesh M. Satre, for the applicant.

Mrs. Megha S. Bajoria, APP for the State – respondent.

Mr. N. B. Chavan, ANC, Azad Maidan Unit, Mumbai.

CORAM : AMIT BORKAR, J.

DATED : JULY 23, 2025

P.C.:

1. The present application for grant of regular bail is preferred by the applicant under the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking his release in connection with Crime Register No. 45 of 2023 registered with the Anti-Narcotics Cell, Azad Maidan Unit, Mumbai, for offences punishable under Section 8(c) read with Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act").

2. As per the case put forth by the prosecution, on 12th May 2023, the surveillance team of the ANC, Azad Maidan Unit,

Mumbai, was acting under specific directions issued by their superior officer to trace absconding accused persons and to take preventive and enforcement action against individuals indulging in the consumption and trafficking of narcotic drugs. Pursuant to the said directions, a field operation was initiated. On 13th May 2023, at around 00:50 hours, the police team reached the vicinity of Godrej Boys BEST Bus Stop, Vikhroli, where the applicant was noticed in a suspicious condition. Upon being spotted, the applicant attempted to evade the police by fleeing on his motorcycle, but was successfully apprehended by the police team. Upon conducting a search of his person, a quantity of 330 grams of Methamphetamine (commonly referred to as 'MD') was recovered from his possession. Thereafter, necessary procedural formalities were undertaken, including the preparation of a panchanama, and the present offence came to be registered.

3. Learned Advocate appearing for the applicant has submitted that there is gross non-compliance with the mandatory provisions of Section 42(1) and Section 42(2) of the NDPS Act. It is his contention that, as per the statutory mandate, the Investigating Officer was required to record reasons to believe the commission of an offence and to forward the said reasons to the immediate superior officer within a period of 72 hours, which has not been complied with in the present case. It is further submitted that there is also non-compliance with the mandate of Section 50 of the NDPS Act, inasmuch as the letter informing the applicant of the available options is a pre-typed format, and does not reflect the free exercise of choice by the applicant. The answer purportedly

given by the applicant, that he is aware of his rights and consents to personal search by the police, is not sufficient compliance with the requirements of Section 50, which obligates the police to specifically inform the accused of his right to be searched in the presence of a Gazetted Officer or Magistrate, and to act accordingly depending on the choice made by the accused.

4. It is further argued on behalf of the applicant that Section 52-A of the NDPS Act, which mandates preparation of an inventory and certification of the same by the Magistrate, has also not been complied with in its true letter and spirit. It is pointed out that the applicant has no criminal antecedents, and that he is willing to abide by any stringent conditions that may be imposed by this Hon'ble Court. It is, therefore, prayed that the applicant be released on regular bail.

5. Per contra, learned Additional Public Prosecutor, Mrs. Bajoria, vehemently opposed the application. She submitted that the contraband recovered from the possession of the applicant, namely 330 grams of Methamphetamine, falls within the category of commercial quantity as defined under the NDPS Act, the threshold being 50 grams. It is her submission that the offence in question arose out of a chance recovery, and therefore, the strict and literal compliance with the provisions of Section 42 of the NDPS Act would not be applicable. She further submitted that the necessary intimation, as contemplated under Section 42, was duly sent to the superior officer post recovery.

6. In response to the contention regarding Section 50, the learned APP placed reliance on the letter produced at page 33 of the bail application, which, according to her, is in Hindi, a language understood by the applicant, and clearly indicates that the applicant was made aware of his legal right to be searched before a Gazetted Officer or Magistrate. The said communication further mentions that such option was made available to the applicant, and he voluntarily stated, in his own handwriting and in the presence of two independent panch witnesses, that he consents to being searched by the police personnel. Hence, the prosecution submits that there is due compliance with Section 50 of the NDPS Act.

7. It is further submitted that the inventory of the seized contraband was prepared in the presence of a Magistrate, and that the requirements of Section 52-A of the NDPS Act stand duly satisfied. The learned APP also invited attention to the rigours of Section 37 of the NDPS Act, which are attracted in the present case due to the seizure of commercial quantity of the contraband. The Forensic Science Laboratory report confirms that the seized substance is Methamphetamine, a prohibited psychotropic substance.

8. In support of her submissions, the learned APP relied upon the decision of the Supreme Court in *Narcotics Control Bureau vs. Mohit Aggarwal*, AIR 2022 SC 3444, wherein the Apex Court interpreted the expression "reasonable grounds" under Section 37(1)(b) to mean plausible and credible grounds which would lead the Court to believe that the accused is not guilty of the

offence alleged and that he is not likely to commit any offence while on bail. It was submitted that the applicant has failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act and, therefore, does not deserve the discretionary relief of bail.

9. I have given my anxious consideration to the submissions advanced on behalf of the applicant and the learned APP for the State. I have perused the material on record, including the FIR, panchanama, recovery memos, and the relevant provisions of law.

10. In the present case, the seizure of 330 grams of Methamphetamine is not in dispute. The recovery is from the conscious possession of the applicant. The applicant was allegedly found in a suspicious condition during patrolling by the Anti-Narcotics Cell and attempted to escape on being apprehended. This conduct itself is indicative of guilt. The search and seizure are duly recorded by way of panchanama prepared at the spot. The recovery is supported by two independent panch witnesses.

11. The applicant has attempted to raise technical pleas regarding non-compliance of Sections 42 and 50 of the NDPS Act. However, having regard to the facts of the case, it appears that the present case is one of chance recovery. The police personnel were on routine patrolling duty and not acting on any prior information against the applicant. As such, the rigour of Section 42(1) and (2) would not strictly apply. Even otherwise, the records prima facie indicate that intimation was sent to the superior officer, thereby complying with the spirit of the said provision.

12. The learned counsel appearing for the applicant has strenuously urged that there is non-compliance with the mandatory provisions of Section 42(1) and 42(2) of the NDPS Act, which vitiates the prosecution case. However, on a careful consideration of the facts and circumstances of the case, and upon perusal of the material placed on record, this Court is of the considered view that such a contention does not merit acceptance.

13. It is well settled in law that the applicability of Section 42 arises in cases where the authorised officer receives prior information pertaining to the commission of an offence under the NDPS Act, relating to concealment or storage of narcotic substances in a building, conveyance or enclosed place, and the said officer is required to reduce the information into writing and send a copy to his immediate superior officer. However, the facts of the present case reveal that the incident is one of chance recovery, which occurred during routine patrolling duties undertaken by the officials of the ANC, Azad Maidan Unit.

14. The police officials, while performing surveillance duty in the vicinity of Godrej Boys BEST Bus Stop, Vikhroli, came across the applicant who was found behaving in a suspicious manner at an odd hour in the night. Upon being spotted, the applicant attempted to flee on a motorcycle and was subsequently apprehended by the team. The search of the applicant's person led to the seizure of 330 grams of Methamphetamine, a prohibited psychotropic substance under the NDPS Act. The recovery was thus not pursuant to any prior tip-off or intelligence input against the applicant.

15. In this backdrop, the present case squarely falls within the category of chance recovery, as recognised by the Supreme Court in *State of Punjab vs. Balbir Singh*, (1994) 3 SCC 299 and reaffirmed in *Karnail Singh vs. State of Haryana*, (2009) 8 SCC 539. The Apex Court in *Karnail Singh* (supra) clarified the distinction between compliance with Section 42 and cases of chance recovery under Section 43. It has been held that when the recovery is effected in a public place, and not on the basis of prior information, the rigours of Section 42 would not be strictly attracted.

16. Even assuming for the sake of argument that Section 42 applies, the records prima facie indicate that the Investigating Officer had, immediately after the apprehension and seizure, communicated the relevant information to his superior officer. The prosecution has placed on record a copy of the intimation sent to the superior officer, which satisfies the requirement of Section 42(2), which is to be fulfilled within a reasonable time and not necessarily before the search and seizure in a case of emergent action.

17. Thus, it cannot be said at this stage that there is any gross or deliberate violation of the statutory safeguards under Section 42. The submission of the learned applicant's counsel, that the alleged procedural lapses vitiate the case in entirety, is not acceptable in light of the factual context and binding precedents governing the issue.

18. The learned advocate for the applicant has also contended that there has been a breach of the mandatory requirement of Section 50 of the NDPS Act, inasmuch as the purported intimation of rights to the applicant was given through a pre-typed letter and the options provided therein were not explained in a meaningful and effective manner. It is submitted that the alleged consent given by the applicant does not satisfy the standard laid down by the Supreme Court in various decisions interpreting Section 50, which requires informed and voluntary waiver of the statutory right.

19. However, on perusal of the material placed on record and in the backdrop of settled law, this Court does not find substance in the said submission. It is pertinent to note that Section 50 of the NDPS Act mandates that when a search of a person is to be conducted, the authorized officer must inform the person to be searched of his right to be searched before a Gazetted Officer or a Magistrate. The provision is intended to ensure transparency and prevent misuse of power.

20. In the present case, the prosecution has relied upon the communication dated 13 May 2023, which is annexed to the bail application at page 33. The said communication is in Hindi, a language understood and spoken by the applicant and clearly states that he has the right to be searched before a Gazetted Officer or a Magistrate. It further records that the said right was explained to the applicant and he was asked whether he wished to exercise the same. The applicant, in his own handwriting, and in the presence of two independent panch witnesses, stated that he was aware of his rights and had no objection to being searched by

the police officers present at the spot.

21. Thus, the requirement of informing the accused of his legal right, and obtaining his response in a voluntary and unambiguous manner, appears to have been duly fulfilled. The safeguards envisaged under Section 50 are meant to secure the rights of the accused, not to frustrate legitimate law enforcement action when proper procedures are adopted. The Apex Court in *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172 and *Vijaysinh Chandubha Jadeja v. State of Gujarat*, (2011) 1 SCC 609, has emphasized that the communication of rights must be real and substantial. In the present case, the prosecution has prima facie shown compliance with the said requirements.

22. It is also significant to note that the contraband substance was recovered from the bag carried by the applicant and not from any concealed part of his person. The Supreme Court in *State of Rajasthan v. Parmanand*, (2014) 5 SCC 345, has clarified that when recovery is from a bag carried by the accused, strict compliance with Section 50 may not be necessary, unless the bag is so connected to the person so as to be inseparable. In the present case, there is nothing to suggest that the bag was inseparably attached to the person of the accused.

23. In view of the above legal position and the facts on record, this Court finds no prima facie ground to hold that there has been any violation of the safeguards under Section 50 of the NDPS Act. The rights of the accused appear to have been adequately protected and the search has been conducted in compliance with

procedural fairness.

24. Learned counsel for the applicant has further submitted that the provisions of Section 52-A of the NDPS Act have not been complied with, and that the inventory procedure has not been undertaken in the presence of a Magistrate. However, this contention also does not inspire confidence at this *prima facie* stage.

25. Section 52-A of the NDPS Act provides for the procedure for disposal of seized narcotic drugs and psychotropic substances and permits the drawing of samples and preparation of an inventory to be certified by a Magistrate. The object behind the provision is to ensure transparency and authenticity in handling seized material and to prevent tampering. In the present case, the prosecution has placed on record material to show that the samples were drawn in accordance with the prescribed procedure and were sealed in the presence of two independent panch witnesses. It is further reflected from the record that the inventory was prepared and certified by the Magistrate concerned.

26. At this stage, it is also necessary to advert to the recent judgment of the Supreme Court in *Narcotics Control Bureau vs. Kashif*, 2024 SCC OnLine SC 3848, wherein the Apex Court has authoritatively interpreted the scope and object of Section 52A of the NDPS Act. The Court held that while Section 52A lays down a procedure for drawing samples and preparation of inventory, the primary purpose is to ensure transparency, prevent tampering of seized contraband, and preserve the evidentiary value of the

seizure by certifying it through a Magistrate.

27. The Supreme Court in *Kashif* (supra) has clarified that non-compliance of Section 52A, particularly sub-section (2) and (3), would not ipso facto vitiate the trial or the seizure unless the accused demonstrates serious prejudice caused due to such alleged lapse.

28. Mere non-production of the inventory prepared before the Magistrate or the failure to send a sample drawn in the presence of the Magistrate is not, by itself, fatal to the prosecution, unless the accused can demonstrate that the sample sent to the forensic lab was not from the seized contraband or that the integrity of the sample is compromised.

29. In the present case, the prosecution has prima facie placed on record sufficient material to demonstrate that the samples were drawn and sealed in the presence of two independent panch witnesses. The samples were forwarded to the Forensic Science Laboratory without delay, and the FSL report confirms that the seized substance was Methamphetamine. There is no material placed on record by the applicant to suggest that the seal was tampered with, or that the samples were not part of the contraband allegedly recovered from his possession.

30. Moreover, the learned APP has submitted, and it appears from the record, that the inventory of the seized article was drawn and presented before the Magistrate for certification, as contemplated under Section 52A(2) of the NDPS Act. In such a circumstance, in light of the dictum in *Kashif* (supra), this Court

finds no ground to hold that there has been any fatal non-compliance of Section 52A that would demolish the prosecution case at this stage or justify grant of bail.

31. Even otherwise, *Kashif* (supra) emphasizes that the standard at the stage of bail is not proof beyond reasonable doubt, but the existence or absence of *prima facie* material to satisfy the twin conditions under Section 37. The applicant has not demonstrated how the alleged procedural lapse, if any, has materially prejudiced him or cast serious doubt on the integrity of the seizure or the samples.

32. Therefore, in light of the legal position laid down in *Kashif* (supra) and applying it to the facts of the present case, this Court is of the view that the procedural compliance under Section 52A is sufficiently established and does not affect the evidentiary worth of the seizure and the FSL report at this stage.

33. Moreover, the Forensic Science Laboratory (FSL) report confirms that the samples seized from the applicant tested positive for Methamphetamine, which is a psychotropic substance listed under the NDPS Act. The FSL report, which has not been challenged on any credible ground, is a vital piece of evidence that supports the prosecution's version of seizure and recovery. The report further affirms that the total quantity seized, i.e., 330 grams of Methamphetamine, is well above the prescribed threshold of 50 grams, thereby qualifying as commercial quantity under the NDPS Act.

34. At this stage, the prosecution need only establish a strong prima facie case based on the seizure, panchanama, and the FSL report, which it has adequately done. The allegations are serious and involve illicit possession of a large quantity of a psychotropic substance, which cannot be lightly ignored.

35. In light of the above discussion, it becomes imperative to consider the application of the statutory bar contained in Section 37 of the NDPS Act. It is by now well settled that when a person is accused of an offence involving commercial quantity, the Court is not empowered to enlarge the accused on bail unless the conditions laid down under Section 37(1)(b) are satisfied.

36. The two conditions prescribed under Section 37(1)(b) are:

(i) the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and

(ii) the Court must also be satisfied that the accused is not likely to commit any offence while on bail. These two conditions are conjunctive and not disjunctive, and both must be satisfied cumulatively.

37. The Supreme Court in *Narcotics Control Bureau vs. Mohit Aggarwal*, AIR 2022 SC 3444, has reiterated that the expression “reasonable grounds” must be interpreted to mean substantial grounds for believing that the accused is not guilty. The satisfaction must be based on material on record and not on mere assertion by the accused. The Court must adopt a cautious and strict approach while considering bail in commercial quantity

cases, as the NDPS Act deals with offences which have far-reaching societal consequences.

38. In the present case, considering the seizure of 330 grams of Methamphetamine, the absence of any plausible explanation for possession, and the recovery being from the conscious possession of the applicant, there are no reasonable grounds at this stage to believe that the applicant is not guilty. No material has been placed on record to dislodge or even seriously question the prosecution case.

39. The argument that the applicant has no prior antecedents or is willing to cooperate with the investigation, though relevant for general bail considerations, cannot override the statutory mandate under Section 37, which requires a much higher threshold for grant of bail in cases involving commercial quantity. The absence of criminal antecedents is not, by itself, a ground to conclude that the applicant is not likely to reoffend or that he is not guilty.

40. In view of the seriousness of the allegations, the seizure of commercial quantity of contraband, the prima facie evidence demonstrating conscious possession, the compliance with statutory safeguards under Sections 42, 50 and 52-A, and the absence of material satisfying the twin conditions under Section 37 of the NDPS Act, this Court is not inclined to exercise discretion in favour of the applicant.

41. The application, therefore, does not merit consideration and is liable to be rejected.

42. The application for grant of regular bail stands rejected.

(AMIT BORKAR, J.)