

Amberkar

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

CRIMINAL BAIL APPLICATION NO.1119 OF 2025

Nasbulen @ Babu Taufik Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH

CRIMINAL BAIL APPLICATION NO.1607 OF 2025

Zulfikar Murtuza Mohin Kothari .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Ankit R. Takle a/w Mr. Taraq Sayyed, Advocates for Applicant in BA 1607 of 2024.
- Ms. Lochan P. Chandka, Advocate for Applicant in BA 1119 of 2025.
- Mr. R.M. Pethe, APP for Respondent No.1 – State in BA 1119 of 2025.
- Ms. Shilpa K. Gajare – Dhumal, APP for Respondent No.1 – State in BA 1607 OF 2025.

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CORAM : MILIND N. JADHAV, J.

DATE : 05 MAY, 2025

P. C.:

1. Applicant in Bail Application No. 1607 of 2025 – Zulfikar Murtuza Mohin Kothari is Original Accused No.8 and Applicant in Bail Application No.1119 – Nasbulen @Babu Taufik Khan is Original Accused No.11. Both are arrested in connection with NDPS Special Case No.465 of 2024 arising out of F.I.R. No.110 of 2024 registered with Kashigaon Police Station for offences under Section 8(c), 22(b), 22(c) and 29 of NDPS Act.

2. Prosecution case emanates out of a secret information which led to the vehicle described therein to be intercepted. The vehicle was carrying Accused No.1 and Accused No.2 whose body was searched. Whilst Accused No.2 was found not to be carrying any contraband, Accused No.1, on the contrary, was found to be in possession of 1 kg of Mephedrone¹. The remainder Accused are indicted on the basis of statements made by Accused No.1 and / or other accused named by him. Recovery of 71.90 gm of MD was made from Accused No.5. Recovery of certain arms was also made from Accused No.15.

3. Ms. Chandka represents Applicant – Accused No.11 in BA 1119 of 2024. She would submit that there is no conscious recovery of any contraband from the possession of Applicant – Accused No.11. She would submit that in all, there are 15 accused persons out of which 4 accused persons have been enlarged on bail. She would submit that the role of Applicant – Accused No.11 is identical to that of Accused who have been set at liberty. She would further add that the role of Accused No.15 is far greater as he was found in possession of arms. Apart from the ground of parity, Ms. Chandka would submit that the grounds of arrest have not been informed to the Applicant. She would further submit that the arrest panchanama of the present Applicant

1 **Mephedrone:** A substance listed at Sr. No. 238-F of the Table as per *sub-clause (viiia) of Section 2* of NDPS Act having ‘small quantity’ as 2 gm and ‘commercial quantity’ as 50 gm.

also appears to be absent in the chargesheet. She would thus pray for the Application to be allowed.

4. Mr. Takle appears on behalf of Applicant in Bail Application No.1607 of 2025. He would submit at the outset that the role assigned to Applicant – Accused No.8 is that to provide material through Safeexpress from Surat which is on similar footing if not lower than other co-accused who have been enlarged on bail. He would submit that the sole ground for indictment of Applicant – Accused No.8 is upon statements made by Accused No.3 which is hit by Section 25 of IEA² and is not corroborated. He would thus assert that the Applicant is innocent and has been falsely implicated in the case especially in the light of the fact that he has no criminal antecedents and him being in custody for the past 9 months. He would thus pray for the Application to be granted.

5. Ms. Gajare – Dhumal and Mr. Pethe, learned APPs would crave leave to address the Court in unison. They would ardently oppose the Bail Applications and would submit in tandem that commercial quantity of contraband is recovered in possession of Accused No.1 which has led the prosecution to Accused No.3 who has named present Applicants along with other Accused persons one of whom was found in possession of commercial quantity of contraband.

2 Indian Evidence Act, 1872

They would submit that the contours of the crime are intricately linked and thus enlarging present Applicants on bail would lead to an imminent possibility of them tampering with evidence and influencing key witnesses. She would thus pray for rejection of Application.

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

7. Indictment of Applicants before me is solely on the basis of statements by co-accused. It is settled law that such statements are hit by the provisions of Section 25 of IEA. The following decisions discuss the aforesaid proposition:-

7.1. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*³ Court held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers

3 (2021) 4 SCC 1

are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

7.2. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*⁴ the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

8. As apparent from the foregoing, statements under Section 67 of NDPS Act are hit by Section 25 of IEA. One may argue that as per provisions of Section 27 of the IEA, recovery made from other co-accused based on such statements can be used to garner admissibility of such statements. A Bail Court need not delve into such propositions, it can be expounded based on the facts of each case by a Court adjudicating a trial.

4 2023 SCC OnLine 135

9. In the present case, it is an admitted position that the Applicants herein were not in possession of any contraband. Prosecution cannot harp upon the rigors of Section 37 without meeting the baseline threshold to satisfy the Court with regards to involvement of Accused in the crime. At this *prima facie* stage, the material placed on record does not suffice to trigger the rigors of Section 37 of NDPS Act. Complicity of Applicants may be proved at the stage of trial after ascertaining the veracity of evidence and statements post subjugation to the test of trial.

10. It is also brought to the notice of the Court that similarly placed Accused have been released on bail. This entitles the Applicants herein to benefit on the principle of parity. I am inclined to release the Applicants on bail.

11. In view of the above *prima facie* observations, present Applications are allowed in the following terms:-

- (i) Both 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, the 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 with 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.PC. i.e. for cancellation of bail.

12. 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.

13. Bail Application No.1119 of 2025 and Bail Application No.1607 of 2025 are allowed and disposed.

[MILIND N. JADHAV, J.]