

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2251 OF 2025

Samir Shahjahan Shaikh

...Applicant.

Versus

The State of Maharashtra.

...Respondent.

Ms. Ashwini Achari a/w. Mr. Taraq Sayed, a/w. Mr. Anish Pereira, Advocate for Applicant.

Ms. Anamika Malhotra, APP for Respondent-State.

API Ratnamala Rohit Chaudhari-Sawant, Hinjewadi Police Station.

CORAM: ASHWIN D. BHOBE, J.

DATED: 25th AUGUST, 2025.

PC:-

1. Heard Ms. Ashwini Achari, learned Advocate for the Applicant and Ms. Anamika Malhotra, learned APP for State.

2. By the present Application filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the Applicant is seeking regular bail in Crime No. 15 of 2024 registered with Hinjewadi Police Station, for the offences punishable under Section 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"). Said Crime is registered as Special Case No. 443 of 2024 and is pending before the Special Court under NDPS Act, Pune.

3. There are two accused in the present crime. Applicant is Accused No. 2. Contraband i.e. 65 grams of Maphedrone (M.D.) came to be seized from the Applicant and Accused No. 1.

4. Applicant was arrested on 5th January, 2024. Bail Application at Exh. 19 filed by the Applicant in Special Case No. 443 of 2024 was rejected by the Special Court under NDPS Act, Pune vide order dated 12th February, 2025.

5. Ms. Ashwini Achari, learned Advocate for the Applicant submits that there is non-compliance with the mandatory requirement of Section 50(1) of the NDPS Act. She relies on the complaint dated 6th January, 2024 and the seizure panchanama(जसी पंचनामा) dated 06/01/2024 to submit that the search of the Applicant was by person/s who were not authorized, as such illegal and violative of the Applicant's right. For the said reasons, she submits that seizure stands vitiated warranting bail to the Applicant.

6. Ms. Malhotra, learned APP for the State submits that the complaint dated 06/01/2024 and the seizure panchanama(जसी पंचनामा) dated 06/01/2024 indicate that there is compliance with the provisions of Section 50 of the NDPS Act. At any rate, she submits that there is substantial compliance of Section 50 of the NDPS Act. She submits that the rigor of Section 37 would apply considering the quantity of the contraband seized.

7. Perused the records with the assistance of the learned Advocates.

8. In the case of *Dilkush G. Sinai v/s. State of Goa*¹, this Court in paragraph 22 has held as follows :

¹1995 SCC OnLine Bom. 455.

06/01/2024 is extracted herein below :

"त्यानंतर वरिष्ठ पोलीस निरीक्षक वैभव शिंगारे यांचे आदेशान्वये आम्ही दोन्ही पंच व सोबतचे पोलीस स्टाफचे उपस्थितीत इसम नामे इम्रान चाँद शेख व समीर शहाजहान, शेख यांची अंगझडती घेतली असता, त्यातील इसम नामे समीर शहाजहान शेख याचे पठाणी कुर्ताच्या डाव्या बाजूच्या खिश्त्यामध्ये एका पारदर्शक पर्सटिक पिशवीत फिकट पांढ-या रंगाचा पदार्थ व लहान लहान प्लॅस्टीकच्या मोकळ्या पिशव्या मिळून आल्या. त्याचेकडे सदर पदार्थाबाबत विचारणा केली असता, त्याने सदर पदार्थ हा मेफेड्रॉन (एम.डी.) हा अंमली पदार्थ असल्याचे सांगितले. तसेच त्याचेकडे दोन मोबाईल, रेल्वे तिकीट व रोख रक्कम मिळून आली. तसेच इम्रान चाँद शेख याचेकडे एक मोबाईल मिळून आला. सदर मिळून आलेल्या मालाचे वर्णन खालील प्रमाणे आहे."
(emphasis supplied)

12. Having regard to the language of Section 42 of NDPS Act, only the officer mentioned therein are empowered to carry out the search. Ms. Malhotra, learned APP attempted to salvage the situation by submitting that there is no clarity as to who conducted the search. On the face of the ambiguity/vagueness in the persons who conducted the search, the benefit would be due to the Applicant. Contents of the complaint and the seizure panchanama give an impression of search being carried out by the panchas. Panchas are not authorized to carry out search.

13. Considering the aforesaid material, having regard to the language of Section 50(1) of NDPS Act, prima facie, in my opinion, search carried out by any person not authorized would amount to transgression of the statutory provision as contemplated under the NDPS Act. Prima facie, I am satisfied that there are reasonable grounds for believing that the Applicant is not guilty of the offence.

14. In view of the above, the Applicant is entitled to bail on the following conditions:

(a) Applicant be released on bail in Crime No. 15 of 2024 registered with Hinjewadi Police Station, upon furnishing PR. Bond in the sum of Rs. 1,00,000/- (Rs. One Lakhs) with one or

two local sureties in the like amount to the satisfaction of the learned Special Court under NDPS Act, Pune.

(b) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing the facts to Court or any Police Officer. The Applicant shall not tamper with evidence.

(c) Applicant upon release within 3 days shall furnish his residential addresses with proof and contact details to the Investigating Officer, Hinjewadi Police Station.

(d) Applicant shall attend each and every date of hearing in Special Case No. 443 of 2024 before the learned Special Court under NDPS Act, Pune, unless exempted.

(f) Observations made in the present order are restricted for considering the present Application for Bail.

15. Bail Application No. 2251 of 2025 is allowed and disposed of on the above terms.

(ASHWIN D. BHOBE,J.)