

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2718 OF 2025**

Jafar Fazal Khan @ Jafar Supari
@Jafarbhai@Jafarchacha @ Chacha @
Bharat @ Bharatbhai

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Sherali Khan a/w Tabish Shaikh, *for the Applicant.*
Ms. Megha S. Bajoria, *APP for the Respondent - State.*
API – Amol Subhash Gavali, ANC Azad Maidan Unit, Crime
Branch, Mumbai, present.

CORAM DR. NEELA GOKHALE, J.
DATED: 14TH NOVEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.87 of 2023 dated 19th October, 2023, registered with the Anti Narcotic Cell, Azad maidan Unit, Crime Branch, Mumbai, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. The facts of the case in brief, are that on 18th October, 2023, at around 23:00 hours Accused No.1 – Mohd. Zaid Farukhi Shaikh was intercepted being found lurking in a suspicious manner. Upon his personal search, he was found to be in possession of 100 grams Mephedrone (**MD**). Upon complying with the statutory provisions of the NDPS Act, he was arrested. Accused No. 1 made a disclosure that the seized contraband was purchased by him from Accused No.2, one Sakib Raees Khan. Accordingly, the Accused No.1 led the raiding party to the Accused No.2's place. The Accused No.2 was also intercepted and upon his search in accordance with law, he was found to be in possession of 100 grams of Mephedrone. Panchanama was drawn regarding the search and seizure of the contraband in compliance of the provisions of the NDPS Act. The FIR came to be registered accordingly and the Accused No. 2 was also arrested.

3. During the investigation it was found that the contraband substance was being supplied to the Accused

Nos.1 and 2 by the present Applicant. Accordingly, the police were also on the look out for the present Applicant. On 29th April 2024, during the patrolling of an area near Thane, the police found the present Applicant in suspicious circumstances. He was apprehended. Pursuant to compliances of the provisions of the NDPS Act, he was searched and 100 grams of Mephedrone was recovered from him as well. Accordingly, he was implicated in the present offence and arrested on 30th April, 2024.

4. The Applicant made an Application before the Special Court for NDPS Act, at Greater Bombay, however, by order dated 19th June 2025, the said Application was rejected. Hence, the Applicant has filed the present Application for the relief as prayed.

5. Mr. Khan, learned counsel for the Applicant, states at the very outset, that Accused No.2 – Sakib Raees Khan and Accused No.4 – Mohd. Hussain Shaikh are enlarged on bail. He submits that CA Report submitted by the FSL does not

conclusively show the presence of only Mephedrone but Methamphetamine is also detected in the said substance. He further submits that there is no compliance of Section 50 of the NDPS Act, to the extent that the Applicant was not orally apprised of his rights under the said provision of the NDPS Act. He has placed reliance on a decision of the Supreme Court in the case of *Ranjan Kumar Chadha v. State of Himchal Pradesh*¹, to buttress his submission pertaining to non-compliance of Section 50 of the NDPS Act. He has also placed on record another decision of the Supreme Court in the matter of *State of NCT of Delhi v. Mohd. Jabir*² also pertaining to the effects of non-compliance of Section 50. He also placed reliance on a decision in the case of *Mina Pun v. State of Uttar Pradesh*³, also on the point of compliance of Section 50 of the NDPS Act.

6. He further submits that disclosure made by the Applicant and his apprehension is not recorded in terms of

1 AIR OnLine 2023 SC 818
2 2024 SCC OnLine SC 4374
3 2023 INSC 776

Section 42 of the NDPS Act regarding the reasons to believe that it was necessary to seize the contraband from the Applicant post sunset and before sunrise. Thus, he submits that on the aforesaid grounds, the Applicant be released on bail.

7. Ms. Bajoria, learned APP representing the State, at the outset distinguished between the order granting bail to the Accused Nos.2 and 4 from the facts in the case of the present Applicant. She submits that the Applicant No.2 – Sakib Raees Khan was released on bail, holding non-compliance of Section 42 and Section 52A of the NDPS Act insofar as the circumstances of his case is concerned. Insofar as the objection of Mr. Khan pertaining to Section 50 is concerned, she has drawn my attention to a letter dated 30th April 2024, which according to her, demonstrates satisfactory compliance of Section 50. Insofar as the violation of Section 42 is concerned, she submits that the narcotic substance was found on the person of the applicant and the provisions of

Section 42 are not applicable in these circumstances since admittedly, no officer entered any building, conveyance or place post sunset and prior to sunrise. She further submits that at the behest of the present Applicant and pursuant to his disclosure, another accused was also apprehended from whom 20 grams of Mephedrone was recovered, *albeit* the said accused is released on bail. She also gives clarification pertaining to CA Report by showing that both the substance found in the contraband seized i.e. Mephedrone and Methamphetamine are narcotic substances and hence this objection is not tenable. She thus, submits that quantity of contraband recovered from the Applicant is commercial quantity being 100 grams of Mephedrone and as such the Investigating Agency having complied with the statutory provisions of the NDPS Act, the Application be rejected.

8. I have heard learned counsels for the respective parties and perused the record of the case with their assistance.

9. I have gone through the order passed by the Sessions Court releasing Accused No.2 on bail. The ground on which he has been enlarged are on account of non-compliance of Section 42 insofar as the said accused is concerned. Insofar as the present Applicant, admittedly, although the police were on the look-out for others involved in the present case, this Applicant was apprehended while the police party was in patrolling duty. Section 42 of the NDPS Act reads thus:-

42. Power of entry, search, seizure and arrest without warrant or authorization. - (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any

illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

10. In the facts of the present case, it is clear that the patrolling persons have not entered into any ‘*building, conveyance or enclosed place*’. The Applicant was found to be in possession of the said substance on his person, while the officials were on patrolling duty and not on any specific information received from any secret source. Hence, I do not find any non- compliance of the provision of Section 42 of the NDPS Act in so far as the arrest of the present applicant is concerned as well as the search and seizure from him.

11. Ms.Bajoria at this stage, has also pointed to Section 43 of the Act. She submits that in circumstances that

the person is detained and searched and apprehend while authorities are on the patrolling duty, the case falls under Section 43 of the NDPS Act. In these circumstances compliance of Section 42 is not required in such a case.

12. Insofar as the objection of Mr. Khan pertaining to Section 50 is concerned I have perused the letter dated 30th April 2024. A plain perusal of the said letter clearly reveals that the Applicant was apprised of his right under Section 50 and he has given in writing that he has no objection to being search by the police. This fact has also been recorded in the Panchanama dated 29th April 2024. The said Panchanama also clearly records that the Applicant was apprised initially in Hindi language orally and thereafter, the appraisal was typed in Hindi language on a laptop and the Applicant was given said letter, on which he acknowledged the appraisal and has stated in writing that he has no such objection and put his signature. In these circumstances, I am of the view that that there is no non-compliance of Section 50 of the NDPS Act.

13. The three decisions cited by Mr. Khan, expound the law on the compliance under Section 50. However, in the present case, since I am of the view that there is a compliance of Section 50 of the NDPS Act, in terms of the observations and decisions of the Supreme Court, the said decisions do not take the case of the Applicant any further. I have also perused the CA Report. It clearly indicates the existence of Mephedrone as well as Methamphetamine in the sample provided to the FSL. Both these substances fall under the category of narcotic substance. In the backdrop of all of the above, in my prima facie view considering the complexity of the transaction and the overall conspectus of the matter, there are reasonable grounds to refuse bail in such case under the NDPS Act. Having observed so, considering the factual complexion of the given case, the rigours under Section 37 of the NDPS Act which are prima facie applicable, cannot be discarded at such preliminary stage. In view of the aforesaid discussion, I am unable to record a *prima facie* satisfaction that the Applicant has not committed the offence as alleged.

14. In view of the aforesaid discussions, the bail application is rejected.

15. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(DR. NEELA GOKHALE, J)