

Nikita

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

BAIL APPLICATION NO.2953 OF 2025

Shaikh Aslam Shaikh Hakim

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Sachin Madhav Bhavar for the Applicant.

Ms. Anamika Malhotra, APP for the State.

CORAM : ASHWIN D. BHOBE, J.

DATED : 14th AUGUST, 2025

P.C.:

1. Heard Mr. Sachin Madhav Bhavar, learned Advocate for the Applicant and Ms. Anamika Malhotra, learned APP for the State.
2. By the present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, Applicant is seeking bail in connection with C. R. No.217 of 2024 registered with Pawarwadi Police Station, Malegaon, Nashik for the offences punishable under Section 8(c) and 22(c) Narcotics Drugs and Psychotropic Substances (NDPS) Act. Said crime is registered as Special Case (NDPS) No.52 of 2025 and is pending before the Court of Additional Sessions

Judge, Malegaon, Dist. Nashik.

3. There are two Accused in the present crime. Applicant is Accused No.1.

4. Case of the prosecution is that on 19.09.2024, at about 10.40 p.m., Applicant was found in possession of contraband i.e., M. D. Powder. Contraband was found in person of the Applicant.

5. Applicant was arrested on 19.09.2024. Bail Application at Exhibit-2 filed by the Applicant in Special Case No.52/2025 was rejected by the Court of the Additional Sessions Judge, Melegaon, Dist. Nashik, on 13.05.2025.

6. Mr. Sachin Madhav Bhavar, learned Advocate for the Applicant submits that the Applicant is seeking bail essentially on the ground of non-compliance of the provisions of Section 50(1) of the NDPS Act. He points out to the notice issued under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which is at page No.50 of the paper-book. He submits that the Police Inspector himself had offered the Applicant to search by himself or by through another Gazetted Officer. He submits that the same is contrary to law.

7. Ms. Anamika Malhotra, learned APP for the State concedes to the fact that notice dated 19.09.2024 is not compliance of the mandate under Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

8. Perused the records with the assistance of the learned Advocate. Grounds on which the Applicant seeks bail is limited to non-compliance with the provisions of Section 50(1) of the NDPS Act.

Section 50 Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

9. Notice dated 19.09.2024 issued to the Applicant reads as follows:

सुचना पत्र

ओवाडीनाला पवारवाडी मालेगांव
दि.19/09/2024

(एन.डी.पी.एस. ऍक्ट क.50 के तहत)

प्रति,

श्री शेख असलम शेख हकिम 3.22 साल रि. हिंमलाज नगर आयेशा बिस्सीवाली इनके घरमे किराए पर मालेगांव.

आपको इस सुचनापन से सुचित किया जाता है कि, हमे गोपणीय सुत्रोंसे मालुमात मिली है कि, आप अवैध रुपसे नशीली चिने बिक्री करने के लिए हो, इसलिए मुझे प्राप्त अधिकार नुसार मै पुलिस निरीक्षक सुधीर बी. पाटील पवारवाडी पोलीस थाना, मालेगाव आपली तलाशी ले सकता हूँ, मैं भी एक राजपत्रीत अधिकारी हूँ, अगर आपको किसी दुसरे दंडाधिकारी या किसी राजपत्रोत अधिकारी के सामने सामने तलाशी देने की इच्छा हो तो मै उसका प्रबंध कर सकता हूँ,

पंचाच्या सहाय्या
दि.19/09/24

1)

2)

(एस.बी पाटील)
पोलीस निरीक्षक
पवारवाडी पो.स्टे. मालेगांव

मुझे आपने नोटीस पढकर बताई उसके तहत मेरी तलाशी आपको लेने कि. इजाजत देता हूँ

संशयित इसमाच्या संमतीची सही/अंगठा दि.19/09/2024
दि.19/09/24

10. Perusal of the said notice dated 19.09.2024 discloses that S.B. Patil, Police Inspector at the inception informed to the Applicant that he himself is the Gazetted Officer and whether the Applicant would like to have himself searched from another Gazetted officer or the Magistrate. Said act of S.B. Patil amounts to breach of Section 50(1) of NDPS Act.

11. In the case of Ashok Muktinath Pande¹, this Court in an identical situation in paragraph 3 has observed as follows:

"3) A bare perusal of the first information report discloses that when the Police Inspector Shri Jagtap at the inception itself informed the applicant that he himself is a Gazetted Officer, the provisions of Section 50(1) of the NDPS Act have been clearly breached. The said alleged appraisal under Section 50(1) of the NDPS Act is contrary to the ratio laid down by the Supreme Court in the case of State of Rajasthan Vs. Parmanand and anr. reported in (2014) 5 SCC 345 and in the case of Special Leave to Appeal (Cri.) No.4590 of 2015(Gurnam Singh @ Gagan vs. State of

1 Bail Application No.2105 of 2015 decided on 08.02.20216.

Punjab). the Division Bench of this Court in the case of Dharmaveer Lekhram Sharma Vs. State of Maharashtra reported in 2001(5) BCR (Cri.) 9 has also held in the similar manner. This Court in Bail Application No. 1145/2015 in the case of Afaque Asif Sayyed Vs. State of Maharashtra by following the ratio laid down by the Supreme Court and the Division Bench of this Court has observed that the moment the Police Officer informs the applicant that he himself is the Gazetted Officer, and then apprises the accused with his right to be searched by other Gazetted Office of Magistrate, the provisions of Section 50(1) of the NDPS Act are violated. In view of the above, the applicant has made out a case to be released.”

12. In view of the above and on account of the breach of the provisions of Section 50(1) of the NDPS Act, the Applicant is entitled to bail. The present Bail Application is allowed, on the following conditions:

a) Applicant is directed to be released on bail in connection 217 with in Crime No. 217 of 2024 registered with Pawarwadi Police Station, Tal. Malegaon, Dist. Nashik on his furnishing PR bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount to the satisfaction of Additional Sessions Judge, Malegaon, Dist. Nashik.

b) Applicant shall attend and regularly appear before the learned Additional Sessions Judge, Malegaon, Dist. Nashik in Special Case (NDPS) No.52 of 2025, on each date of hearing, unless specifically exempted by the court.

c) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade such person from disclosing

the facts to the Court or any police officer and shall not tamper with evidence.

d) Applicant upon his release, within 3 days shall furnish to the Investigation Officer, Pawarwadi Police Station, Tal. Malegaon, Dist. Nashik his residential address with proof and the contact number and to keep the Investigation Officer intimated about the change in the same from time to time.

e) Applicant shall report/ attend before the Investigation Officer Pawarwadi Police Station, Tal. Malegaon, Dist. Nashik on the first Saturday of every month from 10.00 am to 12.00 noon till the framing of charge in Special Case (NDPS) No.52 of 2025.

13. The Bail Application No.2953 of 2025 is allowed in the above said terms.

(ASHWIN D. BHOBE, J.)