

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3990 OF 2025**

Jainul Abidin Afzal Patel	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Dilip Mishra, i/b. Ms. Munira Palanpurwala, Kainat Sayed, Ms. Deepa Amati and Ms. Sumaiya Khan for applicant.

Mr. Kiran C. Shinde, APP for the respondent-State.

CORAM : MANISH PITALE, J.

DATE : 21st NOVEMBER, 2025

P.C. :

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. This is the third bail application of the applicant. The first bail application was argued on 14.12.2024 and when the Court was not inclined to grant relief, the application was withdrawn.

3. Thereafter, the two co-accused persons were granted bail by this Court by order dated 11.03.2025 (Coram: Milind N. Jadhav, J). In that light, the applicant applied for bail before the Sessions Court. But, the application was dismissed by order dated 29.07.2025. Thereupon, the applicant filed another bail application before this Court. On 09.10.2025, the same was withdrawn, with liberty to file a fresh bail application, on the ground that a detailed and comprehensive bail application was required to be filed, as certain crucial aspects were missed out in the same. In pursuance of the said liberty, the instant bail application is filed.

4. The case against the accused persons is that on 02.07.2023, when the concerned police was on patrol duty, they apprehended co-accused No.1 in possession of intermediate quantity of 27 grams mephedrone (MD). It is the case of the investigating authority that on the statement given by the said co-accused, it was revealed that the applicant and another accused were involved in the activity of sale of the said contraband. On the basis of the said statement of the co-accused person, the applicant was arrested on 05.07.2023.

5. The investigation was completed and charge-sheet was filed. It is also the specific case of the the investigating authority that when the applicant was apprehended, he was found in possession of 52 gms i.e. commercial quantity of MD. Presently, Special Case No.2317of 2023 arising from FIR No.55 of 2023, is pending against the applicant and the co-accused persons for offences punishable under Sections 8(c), 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

6. The learned counsel for the applicant as well as the learned APP have made submissions on the basis of the material on record. It is to be noted that since the allegation against the applicant is that he was found in possession of commercial quantity of the said contraband, order dated 11.03.2025 passed in favour of the co-accused persons, would not inure to his benefit since one of them was found in possession of intermediate quantity of contraband and another was not in possession of the contraband.

7. This Court, having considered the rival submissions, is inclined to grant bail for the following reasons:

(a) Even if the allegation levelled against the applicant that he was carrying 52 gms of contraband, is to be taken into

consideration, the material on record shows that the contraband was weighed in a plastic pouch and the weight of 52 gms, included the weight of plastic pouch. If the weight of the plastic pouch is excluded, *prima facie*, it can be said that the contraband recovered from the applicant was below 50 gms i.e. below commercial quantity and hence, the same takes the case out of the rigours of Section 37(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

- (b) The Supreme Court, in the case of *Abuzar Shakeel Khan vs. The State of Maharashtra* in order dated 22.08.2025, passed in Special Leave Petition (Criminal) No.728 of 2025, took into consideration a submission that the contraband recovered in the said case, weighed 60 gms with its packing and excluding the packing, it could be said to be intermediate quantity. Considering the said aspect highlighted by the Supreme Court in the said order, it can be said that the applicant, *prima facie*, was dealing with the contraband less than the commercial quantity, which is a factor that can inure to his benefit.
- (c) If the aforesaid contention is accepted for making out a *prima facie* case in favour of the applicant, the rigours of Section 37(1) of the NDPS Act, not applying, parity could be claimed with the co-accused persons, who were granted bail by order dated 11.03.2025 passed by the Co-ordinate Bench.
- (d) The applicant in the present case is stated to be a 19-year old person, who has no criminal antecedents. This is another factor that can be taken into consideration.
- (e) It is undisputed that the charge-sheet was filed in the year 2023 itself and yet, even charges have not been framed till date. The charge-sheet shows that the prosecution intends to examine as many as 38 witnesses.

(f) The applicant has admittedly suffered incarceration for about 2 years and 4 months and considering the number of witnesses that the prosecution intends to examine, the possibility of the trial being completed in the near future, appears to be remote. It is to be noted that the Supreme Court, in its order passed in the case of **Abuzar Shakeel Khan vs. The State of Maharashtra** (*supra*), granted bail when the applicant therein had suffered incarceration for only 1 year and 9 months, pending trial.

8. For the aforesaid reasons, this Court is inclined to allow the application. It would be appropriate that the conditions imposed upon the co-accused persons, are also the conditions imposed on this applicant, while granting him bail.

9. In view of the above, the application is allowed in the following terms:

- (i) The applicant is directed to be released on bail in N.D.P.S. Special Case No.2317 of 2023 registered with the DCB, CID Unit III vide C.R. No. 55 of 2023 registered with DCB, CID Unit 3, on furnishing P.R. Bond in the sum of ₹ 50,000/- with one or two sureties in the like amount;
- (ii) After release from jail, the applicant shall report to the Investigating Officer as and when called for;
- (iii) The applicant shall attend the trial Court on first Monday of every month between 11:00 a.m. and 01:00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, he shall mark presence on the next working day;
- (iv) The applicant 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 he does so, it will entitle the prosecution to apply for cancellation of this order;

- (v) The applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) The applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Before his actual release from jail, the applicant shall furnish their respective address where they propose to reside after their release from jail, to the concerned Police Station and also to the trial Court;
- (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.P.C. i.e. for cancellation of Bail.

10. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

11. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli

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