

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4184 OF 2024
WITH
INTERIM APPLICATION NO.1683 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 4184 OF 2024

Kamruddin Mohd Zahid Shaikh @ Kammu .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Prasannan Namboodiri a/w. Ms. Pratibha Namboodiri, Mr. Rishabh Sinha, Ms. Pallavi Dabak and Ms. Nakshatra Mahadik, Advocated for Applicant.
 - Mr. R. M. Pethe, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 06, 2025.

P.C.:

1. Heard Mr. Namboodiri learned Advocate for Applicant and Mr. Pethe learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.24 of 2023 registered with Anti-Narcotic Cell, Worli Unit for offences under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "**NDPS Act**"). There are three accused in the crime and present Applicant is arraigned as Accused No.1. He was arrested in connection with the present crime on

18.03.2023.

3. On 27.01.2025 considering the precarious medical condition of Applicant who is suffering from chronic Hepatitis with liver cirrhosis (F4 stage) granted interim bail to the Applicant for a period of three (3) months from the date of the order i.e. 27.01.2025. Pursuant to the release of the Applicant in compliance of order dated 27.01.2025 Applicant has filed Affidavit dated 26.04.2025 wherein he has delineated the details of treatment undertaken by him alongwith all supporting documents. However as his condition has still not improved, rather it is critical, at the request of learned Advocate for Applicant, I have taken up the matter for consideration on merits for grant of regular bail to Applicant.

4. Briefly stated case of prosecution is that on 17.03.2023 at 23:25 hours, Applicant alongwith co-accused Nos.2 and 3 were accosted during patrolling by the prosecuting agency. As per prosecution case Applicant was apprehended with 60 grams of alleged contraband Mephedrone (commonly known as 'MD') who disclosed that he procured the alleged contraband from co-accused No.2 who was apprehended with 100 grams of alleged contraband MD and further co-accused No.2 disclosed name of co-accused No.3 as his supplier who was apprehended with 110 grams of alleged contraband MD.

5. On merits of the case, Mr. Namboodiri, learned Advocate for Applicant would submit that the prosecuting agency weighed the alleged contraband seized from present Applicant alongwith the transparent plastic bag and also stapler pins and hence he would submit that possibility of the alleged contraband being below the commercial quantity cap of 50 grams for the alleged contraband MD cannot be ruled out. He would submit that there is also non-compliance of provisions of Section 42 of the NDPS Act.

5.1. He would submit that the prosecuting agency has not followed the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (for short “**NDPS Rules, 2022**”) in its true letter and spirit. He would submit that the inventory panchanama prepared by the prosecution is not in accordance with Form 5 thereby amounting to non-compliance of Rule 8 of the NDPS Rules, 2022. He would submit that there is also non-compliance of Rule 14 of the NDPS Rules, 2022 as the Chemical Analysis Report is not submitted within 15 days as mandated by Rule 14. In view of the above transgressions of the mandatory statutory submission, he would submit that the prosecution case would stand vitiated and hence rigours of Section 37 of the NDPS Act would not apply. He would therefore urge the Court to release the Applicant on bail.

6. Mr. Pethe, learned APP has vehemently opposed the Bail Application and would submit that Applicant is apprehended with 60 grams of MD which is commercial quantity. Hence he would submit that rigours of Section 37 of the NDPS Act would be applicable to Applicant's case. He would submit that any observation on the issues argued by Applicant would amount to a mini trial without evidence at the bail stage which ought not be done by the Court. He would submit that there is ample material on record to establish complicity of Applicant in the crime and hence would pray for rejection of Bail Application.

7. I have heard the learned Advocates for the parties and with their able assistance perused the record of the case.

8. Perusal of the charge-sheet at page No.127 reveals that the C.R. Number of the present case is affixed on the label of the envelope containing the alleged contraband at the time of seizure. This Court is time and again faced with cases where such arbitrary practice is followed by the prosecution of putting the C.R. Number during seizure proceeding. There is no explanation for the fact as to how the C.R. number was affixed on the label during seizure proceedings as the crime is registered subsequent thereto. The said issue is covered by the decision of this Court in the case of *Sarfaraj Abdul Majid Ahmed Vs. The State of Maharashtra*¹.

¹ BA No. 4954 of 2024 a/w connected matters decided on 24.03.2025.

9. Furthermore, it is also seen that there is transgression of Rules 8 and 14 of the NDPS Rules, 2022 as submitted by Mr. Namboodiri. The weight of the alleged contraband being 60 grams alongwith plastic zip-lock pouch and stapler pins is another issues which draws the attention of the Court. The commercial quantity of MD is 50 grams. Considering that weight of the alleged contraband MD seized from Applicant is marginally above the the threshold of commercial quantity as also weighed alongwith weight of plastic ziplock pouch and stapler pins, a benefit of doubt needs to be given to the Applicant. In this regard attention is drawn to the decision of the Punjab and Haryana High Court in the case of *Gurprabh Singh @ Prince Vs. State of Punjab*² wherein the Court considering that quantity of the seized contraband from the accused was marginally above the commercial quantity by 10 grams for that respective contraband and considering the various decisions passed by it, granted bail to the Applicant therein.

10. That apart precarious medical condition of Applicant which is evident from the perusal of Affidavit dated 26.04.2025 filed by Applicant which require him to be under constant medical observation deserves immediate consideration. I have perused the said affidavit. It is filed in compliance with order dated 27.01.2025 passed by this Court. Contents of the said Affidavit cannot be disbelieved. Applicant is

² CRM-M-50716-2024 decided on 27.02.2025

suffering from Liver cirrhosis.

11. In view of the above *prima facie* observations on facts and the transgressions of the statutory provisions coupled with the precarious medical condition of the Applicant, the interim medical bail granted to the Applicant by order dated 21.01.2025 is confirmed and Applicant is enlarged on regular bail.

12. Bail Application is allowed on the following terms and condition:-

- (i) Applicant is directed to be released on regular bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 50,000/- (Rs. Fifty Thousand Only) for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 50,000/- within a period of four weeks from the date of uploading of this order which shall be accepted by the Investigating Officer. The Applicant shall provide the sureties as directed;
- (iii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third

Saturday between 10:00 a.m. to 12:00 p.m. for three months or as and when called and apprise his medical details, condition and hospitalization if any;

(iv) Applicant shall co-operate with the conduct of trial on all dates unless specifically exempted;

(v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; He shall deposit his passport, if any, with the Investigating Officer;

(vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

(vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time; and

(viii) Any infraction of the above conditions shall entail prosecution to seek cancellation of this order.

13. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits

being uninfluenced with any of the *prima facie* observations made herein above in this order.

14. Bail Application No.4184 of 2024 is allowed and disposed. In view of the disposal of the Bail Application, Interim Application is accordingly disposed.

[MILIND N. JADHAV, J.]

Ajay

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