



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.501 OF 2025
(Mr. Zuber Afsar Shaikh Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Moin Khan, Advocate a/b Mr. N.K. Bhangde, Advocate for the
applicant.
Mr. A.M. Ghogare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 30, 2025.

Apprehending the arrest at the hands of police in connection with Crime No.559/2024 registered with Police Station Pachpaoli, District Nagpur for the offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), the applicant approached this Court for grant of pre-arrest bail.

2. The Crime is registered on the basis of report lodged by Manoj Ghurade, Assistant Police Inspector, on an allegation that they have received a secret information that one person by name Azaruddin Kazi is selling the contraband articles (MD) and at about 11.00 PM he is supposed to deliver said contraband articles. On the basis of the said information by taking it in the station diary he along with the other raiding party members proceeded at the spot of incident along with the other material. On

conducting a raid one person was found in a suspicious condition who was taken into the custody and he has disclosed his name as Azaruddin Rahimuddin Kazi. The another person disclosed his name as Mohammad Irfan Shabbir Ahmed and Nadim Khan Nasim Khan. On taking the personal search the Mephedrone (MD) of 306 grams was seized from their possession. On the basis of the said report, police have registered the crime. During investigation, the co-accused Azaruddin Rahimuddin Kazi made a disclosure statement that he has obtained the said MD from the present applicant because the present applicant who is dealing with the said contraband articles. On the basis of the said statement, the present applicant was arraigned as an accused.

3. Learned Counsel for the applicant who appeared through Video Conferencing submitted that as far as the involvement of the present applicant is concerned except the statement of the co-accused which is not admissible, no other material is collected during the investigation. Merely because there was a friendship between the present applicant and the co-accused Azaruddin Rahimuddin Kazi there are phone calls between them, and therefore, as there is no connection of the present applicant as to the contraband articles is concerned, he be released on anticipatory bail.

4. Learned APP strongly opposed the application and submitted that the commercial quantity of

Mephedrone (MD) of 306 grams was found in the possession of the co-accused during investigation and during further investigation the involvement of the present applicant revealed. The present applicant was using mobile No.7021797742 and from the said mobile number there are various calls made to the co-accused Azaruddin Rahimuddin Kazi. He further invited my attention towards the account statement of the present applicant as well as the co-accused and submitted that there are various transactions took place between them by which on various occasions amounts are transferred in the account of the present applicant by the other co-accused. Thus, the connection between the two accused persons revealed from the said investigation papers. He also invited my attention towards Section 37 of the NDPS Act which bars the anticipatory bail and prays for rejection of the application.

5. I have heard learned Counsel for both the parties. Perused the entire investigation papers. Admittedly, the applicant was not found at the spot of incident. His involvement reveals from the statement of the other co-accused. During investigation, the statement was recorded and it revealed to the investigating agency that it was the present applicant who is selling the said contraband article i.e. Mephedrone to the various persons and the co-accused has obtained the said Mephedrone from the present applicant namely Juber Afsar Sheikh and

thereafter he was selling the same. He was found while selling the contraband articles at the public place. To connect the present applicant with the alleged offence, the prosecution during investigation collected the CDR reports. On perusal of the CDR reports it reveals that approximately 200 calls are made by the present applicant to the other co-accused by mobile number 7021797742. as far as the contention of the present applicant as to the friendship between both of them is concerned cannot be considered at this stage. Besides the CDR reports, there are various transactions took place between the present applicant and the other co-accused. Their account statements show that on various occasions the amounts are transferred from the account of the present applicant to the other co-accused as well as the amounts are also transferred from the account of the co-accused to the account of the present applicant. Thus, perusal of the record shows that apart from the aforesaid transaction admittedly, there is material to show that there was constant communication between the present applicant and the other co-accused.

6. The Hon'ble Apex Court in the case of **Tofan Singh Vs. The State of Tamil Nadu [(2021) 4 SCC 1]** held that the statement recorded under Section 67 of the said Act cannot be used as a confessional statement in the trial for offence under the said Act. The Hon'ble Apex Court in paragraph No.59 observed that the marginal note to

Section 67 indicates that it refers only to the power to “call for information, etc.”. It is further held that the said statement recorded under Section 67 of the said Act cannot be used as a confessional statement.

7. In the case of **State (By NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and anr. [(2022) 12 SCC 633]** along with the connected matters wherein also it has been held that in clear terms in **Tofan Singh Vs. State of Tamil Nadu** (supra) that confessional statement recorded under Section 67 will remain inadmissible in the trial of an offence under the said Act.

8. This aspect is recently considered by the Hon’ble Apex Court in the case of the **State of Haryana Versus Samarth Kumar [2022 Livelaw (Sc) 622]** wherein it is observed that In cases of this nature, the respondents may be able to take advantage of the decision in **Tofan Singh vs. State of Tamil Nadu** (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted and cancelled the bail granted to the accused therein by the High Court.

9. In the light of the above said observation of the Hon’ble Apex Court and considering the fact that not

only the confessional statement of the co-accused but the transactions between the present applicant and the other co-accused and the CDR reports shows the connection between them. Thus, at this stage, there is a *prima facie* material to connect the present applicant in the alleged offence, and therefore, in view of bar under Section 37 of the NDPS Act, the application deserves to be rejected.

10. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*