



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

CRIMINAL APPLICATION (BA) NO.787 OF 2025
(Amardeep s/o Shrinarayan Sharma Vs. 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. G.S. Gour, Advocate for the applicant.
Mr. A.J. Gohokar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 01, 2025.

The applicant came to be arrested on 08.10.2024 in connection with Crime No.355/2024 registered with Police Station Nandanvan, Nagpur, District Nagpur for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. The crime is registered on the basis of the report lodged by the Police Inspector Gajanan Gulhane of the Anti Narcotic Cell, Crime Branch, Nagpur on an allegation that he has received a secret information about two persons namely Kapil Khobragade and Rakesh Giri coming near the Hiwari Nagar Garden at about 8.00 a.m. for sale of MD (Mephedrone), after completing all the formalities as contemplated under Section 41, 42 (1)(2) of the NDPS Act and after calling the independent panchas and the Electronic Weight Measurer, Photographer, the raiding party rushed towards the spot. At about 10.30 a.m. two persons came near the spot and they were

intercepted. From the possession of the said persons 318 grams of MD worth Rs.31,80,000/- was found from one Kapil Khobragade and 538 grams of MD worth Rs.53,80,000/- was found from Rakesh Anantrao Giri and 51 grams of MD worth Rs.5,10,000/- was found from co-accused Akshay Wanjari. Thus, total 907 grams of MD worth Rs.90,70,000/- was seized from all the accused. Upon inquiry, it revealed that they have brought the said contraband from the present applicant. On the basis of the said statement of the co-accused, the present applicant is arraigned as an accused.

3. Learned Counsel for the applicant submitted that except the statement of the co-accused, there is not other material collected by the investigating agency to show any connection between the present applicant and other co-accused. He submitted that the statement of the co-accused recorded under Section 67 is not admissible in view of the decision of the Hon'ble Apex Court in the case of Tofan Singh Vs. The State of Tamil Naidu [(2021) 4 SCC 1] and State (By NCB) Bengaluru Vs Pallulabid Ahmad Arimutta and anr. [(2022) 12 SCC 633]. In view of that the rigour under Section 37 of the NDPS Act is not attracted and prayed for granting of bail.

4. He further invited my attention towards the CDR report which shows that a single call between the present applicant and the other co-accused is not sufficient to connect the present applicant with the alleged offence. He further submitted that the prosecution also relied upon

account statement of the co-accused from which it reveals that there were transactions between the present applicant and the other co-accused but the same is also not sufficient as the amount which are transferred from the account of the other co-accused Kapil Khobragade are very meager amount. He submitted that the recitals of the FIR shows that the Mephedrone found in the possession found in the possession of the co-accused worth of Rs.90,70,000/- and in the light of the same, if the transactions are seen these are of a meager amount, therefore, the contention of the prosecution that the present applicant is involved in the same crime along with the other co-accused is not sustainable. He submitted that considering the fact that there is evidence collected during the investigation to show that the CDR reports of mobile phone which are obtained by the investigating agency belongs to the present applicant and mere transactions of some amount between the present applicant and other co-accused is not sufficient to connect him with the alleged offence. In view of that, the application deserves to be allowed and the applicant be released on bail.

5. *Per contra*, learned APP strongly opposed the said application and submitted that the statements of the wife of the present applicant and money transaction between the present applicant and the co-accused and the CDR reports sufficiently shows the involvement of the present applicant in the alleged offence. The huge contraband articles were seized from the co-accused

which was procured by them from the present applicant. In support of his contention he placed reliance on the State By The Inspector of Police Versus B. Ramu in Criminal Appeal No(s). 801 of 2024(Arising out of SLP(Crl.) No(s). 8137 of 2022) dated 12.02.2024. wherein the rigour under Section 37 of the NDPS Act is extensively dealt by the Hon'ble Apex Court and it is observed that a plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail. He further submitted that there are criminal antecedents against the present applicant. For all above these grounds he prays for rejection of the application.

6. After hearing learned Counsel for both the sides and on perusal of the investigation papers, it reveals that besides the statements of the co-accused, the prosecution placed reliance on the statement of the wife of the present applicant. As far as the statement of the wife of the present applicant is concerned it is only to the extent that she is not aware who is depositing the amount in her account. Except that nothing reveals from the said statement. The another circumstance on which prosecution relied upon is the money transaction between the present applicant and the other co-accused.

Considering the huge magnitude and the price of the said MD powder, the amounts transferred to the account of the present applicant are very meager amount. Learned APP also invited my attention towards CDR report but a single call was between the present applicant and the other co-accused. Thus, CDR reports are also not sufficient to connect the present applicant with the alleged offence.

7. On hearing the submissions of both the sides and on perusal of the investigation papers, there is no dispute as to the fact that the huge contraband was seized from the co-accused and as per their statements, the same was procured from the present applicant. As far as the involvement of the present applicant and the procurement by them from the present applicant is concerned, except the statement of the co-accused there is no other material to show that there was any connection between the present applicant and the other co-accused. CDR report shows only one communication between the present applicant and the other co-accused. The account statement also shows very meager amounts are transferred in the account of the present applicant.

8. The Hon'ble Apex Court in the case of Tofan Singh Vs. State of Tamil Naidu (supra) in paragraph No.59 observed that the marginal note to the section 67 of the NDPS Act 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 confessional statement against the

co-accused.

9. The Hon'ble Apex Court in the case of State (BY NCB) Bengaluru (supra) by referring the decision of Tofan Singh Vs. State of Tamil Naidu (supra) held that the confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the said Act.

10. In the light of the above observation itself the confessional statement there is no other material to connect the present applicant with the alleged offence. Admittedly, there is consistent view as far as the involvement on the basis of the statement is concerned. Learned APP placed reliance on the decision of the Hon'ble Apex Court there is no controversy as far as the observation of the Hon'ble Apex Court is concerned that the Court has to record the satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail. That satisfaction is not required to be recorded by observing that the evidence is not sufficient to convict the accused but *prima facie* observation has to be there.

11. Considering the observation of the Hon'ble Apex Court in the referred judgment it cannot be observed that at this stage there is no involvement of the present applicant in the said offence. But considering that there are reasonable grounds at this stage to hold that the accused is not guilty of the offence as merely on the basis

of the statement of the co-accused, his implication is there, and therefore, the rigour under Section 37 will not attract in the present case. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) The applicant – Amardeep s/o Shrinarayan Sharma in connection with Crime No.355/2024 registered with Police Station Nandanvan, Nagpur, District Nagpur for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on executing P.R. bond of Rs.1,00,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned police station twice in a month on 1st and 15th day of every month, till the culmination of the trial and shall cooperate with the investigating agency.
- (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case in any manner either personally or by way of electronic media.

(v) The applicant shall furnish his Cell phone number and address with the address proof additionally he shall furnish names of his two relatives and their address proof, before the investigating agency.

(vi) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

(vii) The applicant shall not indulge himself in similar type of the activities. A single registration of the offence would lead to the cancellation of bail.

12. Needless to mention that the observations made in the order are purely prima facie for deciding the present application for grant of bail and the learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

13. The contravention of any of the condition imposed by this Court, would lead to the cancellation of bail.

14. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)