



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 362 OF 2025

Mohammad Maifuz Mohammad Iqbal Sheikh
Vs.
State of Maharashtra, through Police Station Officer, Police Station,
Pachpaoli, District Nagpur

AND

CRIMINAL APPLICATION (BA) NO. 867 OF 2024

Sheikh Ahefaz Sheikh Akram
Vs.
State of Maharashtra, through Police Station Officer, Police Station,
Pachpaoli, Nagpur District Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

BA NO.362/2025

Mr. Anil Mardikar, Senior Counsel a/b Mr. Digvijay Prakash Singh,
Counsel for the applicant.
Ms. S. S. Dhote, APP for non-applicant/State.

BA NO.867/2024

Mr. R. M. Daga, Counsel for the applicant.
Ms. H. N. Prabhu, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/06/2025

1. By these applications, the applicants are seeking bail 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').

2. The Crime is registered on the basis of report lodged by Manoj Ghurade, Assistant Police Inspector, on an allegation that on 15.06.2024, one person by name Azaruddin Kazi i.e. the co-accused was about to deliver the contraband and the said information was received by him. Accordingly, he along with the other raiding party members laid the trap in presence of the panchas on following due procedure went to the spot and kept the surveillance at Mahendra Nagar near Rahemania Masjid. On 16.06.2024 at midnight at about 00.30 hours, two persons came on one motorcycle and another by walking after about five minutes and the said person came out of the house and they have exchanged the articles. Accordingly, all these three persons were intercepted in presence of the panchas. Their search was taken and 306 grams MD was found with them worth of Rs.30,60,000/-, which was tested and found positive test, accordingly, the same was seized. During the investigation and interrogation with these arrested accused, the names of the present applicants revealed and therefore, the charge-sheet was filed against the present applicants.

3. Heard learned Senior Counsel Mr. Mardikar for the applicant, who submitted that the arraignment of the present applicant in the above said crimes is only on the basis of the statement of the co-accused which is not admissible, in view of the judgment of the Hon'ble Apex Court. He further

submitted that at the instance of the co-accused one diary was seized and in the said diary, the names of the present applicants are mentioned. During the investigation, the CDR and SDR were collected and the investigating agency also relied upon the monetary transaction between the applicant in Criminal Application (BA) No.362/2025 Mohammad Maifuz Mohammad Iqbal and on the basis of the said investigation, the applicant is arrested and the supplementary charge-sheet was filed against him. He further submitted that in view of the decision of the Hon'ble Apex Court in the case of **Tofan Singh vs The State of Tamil Nadu** reported in **(2021) 4 SCC 1**. The statement of the co-accused is hit by Section 67 of the NDPS Act and, therefore, that material is not helpful to the prosecution to show the involvement of the present applicant in the alleged offence. He has also invited my attention towards the monetary transaction and submitted that the monetary transaction is much prior to the alleged incident. There was no monetary transaction between the present applicant and the other co-accused after 09.06.2022. Similarly the CDR reports also nowhere shows any communication between the present applicant and the other co-accused after 25.10.2023. Thus, there is no proximity between the CDR reports and the alleged incident, when the contraband articles are seized from the other co-accused. In support of his contention, he placed reliance on the decision of the

Hon'ble Apex Court in the case of **Bharat Chaudhary Vs. Union of India** reported in **(2021) 20 SCC 50, Baburao s/o Veeraswami Kamapti Vs. State of Maharashtra in Criminal Application (BA) No.1043/2023**, decided on 11.12.2023, **Rajesh Kanhaiyalal Gupta Vs. Union of India and Ors in Bail Application No.1632/2024**, decided on 28.08.2024, **Saddam Hussain Aslam Sarang Vs. The State of Maharashtra in Bail Application No.2655/2024** decided on 27.08.2024, **Sebil Elanjimpally Vs. The State of Odisha in Criminal Appeal No.1578/2023** and **Munshi Sah Vs. State of Bihar and another in Criminal Appeal Nos. 3198-3199 of 2023 dated 13.10.2023**.

4. Learned Counsel Mr. Daga for the applicant endorsed the same contentions and submitted that except the CDR reports, there is no other material to connect the present applicant with the alleged offence. Mere CDR reports are not sufficient to connect the present applicant with the alleged offence.

5. Learned APP in both the applications strongly opposed the said applications and submitted that after the interrogation with the co-accused, the involvement of the present applicants revealed, CDR reports are collected, the CDR reports connect the present applicants with the co-accused, at this stage,

the sufficient material is on record to connect the present applicants with the alleged offence. In view of bar under Section 37 of the NDPS Act, the applications deserve to be rejected.

6. Having heard the learned Senior Counsel Mr. Mardikar for the applicant in Criminal Application (BA) No.362/2025 and learned Counsel Mr. Daga for the applicant in Criminal Application BA No.867/2024 and learned APP for the State in both applications, perused the investigation papers, it reveals that on conducting the raid, the commercial quantity of contraband Mephedrone was seized from the other co-accused of 306 grams. During the interrogation with them, their memorandum statements were recorded by the Investigating Officer, wherein the names of the present applicants and another co-accused are revealed. As per the statement of the co-accused, one diary was seized wherein the names of the present applicants are mentioned to connect the present applicants with the alleged offence. The Investigating Officer has collected the bank statement and the CDR reports. As far as the bank statement of the applicant Mohammad Maifuz Mohammad Iqbal Sheikh is concerned, it is up to October 2023 thereafter, there was no money transaction between the present applicants and the other co-accused. The CDR report also shows that there was a communication between the applicant Mohammad Maifuz and the co-accused up to

25.10.2023 and thereafter, there is no communication between them. As far as the other applicant is concerned, there appears to be a communication till June 2024, however, except the CDR reports, there is no other material to connect the applicants with the alleged offence. The money transaction between the other applicant is lastly on 08.01.2024 i.e. of Rs.2000/- and on 08.01.2024 it is of Rs.28,000/-. Whereas the alleged incident of seizure of the contraband articles is dated 16.06.2024 that much after 4 to 5 months of the said transactions.

7. Perusal of the record shows that apart from the aforesaid transactions, admittedly there is not a single material to show the money transaction between the applicant and the other co-accused and the said transaction much prior to the present incident. At this stage, it would not be proper to record a finding that whether the applicant is involved in the above said crime or not. The Hon'ble Apex Court in the case of **Tofan Singh vs The State of Tamil Nadu** (refer supra) 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 and the accused are released on bail.

8. In the case of **State (By NCB) Bengallure Vs. Pallulabid Ahmad Arimutta and another** reported in **(2022) 12 SCC 633** along with the connected matter 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.

9. In the teeth of the aforesaid decision, the arrest of the applicants is on the basis of the confessional statement of the co-accused under Section 67 of the said Act cannot form the basis for overturning the impugned order releasing them on bail.

10. In the light of the above said observation of the Hon'ble Apex Court and considering the fact that except the confessional statement of the co-accused and the transactions which are much prior to the said incident, no other material is on record to connect the applicants with the alleged offence. From the money transaction or from the account statement or from the CDR reports, it cannot be ascertained that there was continuous communication between the present applicants at the time of the incident.

11. At this stage, in the light of the insufficient material available against the applicants, the rigor under Section 37 of the Act of 1989 will not attract and in view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) Criminal Application (BA) No. 362 / 2025 and Criminal Application (BA) No. 867/2024 are allowed.

(ii) The applicant **Mohammad Maifuz Mohammad Iqbal Sheikh** in Criminal Application (BA) No.362/2025 and the applicant **Sheikh Ahefaz Sheikh Akram** in Criminal Application (BA) No. 867/2024, shall be released on bail 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, on executing PR bond in the sum of Rs.1,00,000/- each with one solvent surety in the like amount.

(iii) The applicants shall not leave the jurisdiction of the Nagpur district without prior permission of the district Court Nagpur.

(iv) The applicants shall attend the concerned Police Station twice in a month on 1st and 15th of every month and the Investigating Officer shall record their presence.

(v) The applicants shall not indulge in similar type of the activities. A single

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registration of the offence would lead to the cancellation of bail.

(vi) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vii) The applicants shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

The applications are disposed of.

(URMILA JOSHI-PHALKE, J.)