



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

CRIMINAL APPLICATION (BA) NO. 691 OF 2025

(Shaikh Atik S/o Shaikh Latif

Vs.

State of Maharashtra, Thr. PSO, P.S. Panchpawli, Nagpur)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. S.D. Chande, Advocate for the Applicant.
Mr. N.R. Rode, APP for the Non-applicant/State.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 8th AUGUST, 2025

1. The present Application is filed by the accused No.7 for grant of bail in connection with Crime No.559/2024 registered with Police Station Panchpaoli, 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 present Applicant is taken into custody by way of production warrant on 19.06.2024 in connection of the aforesaid crime. The accusation against the present Applicant is that the complainant received the secret information of sale of Mephedrone Powder (MD), and therefore, after making all the answering legal compliances, considering the alongwith raiding staff laid a trap. When the raiding party was standing near the Raheman Majdiz

Mahendra Nagar on 16.06.2024 at about 0030 hours two persons stopped in front of house. After 5 minutes the persons who was referred in the secrete information also came there and they were negotiating the same. At 0040 hours the raiding party encircled them and apprehended all the three persons and they were taken into custody, from them 306 gram of Mephedrone Powder was seized. The contraband seized was from Ajurudin Rahimudin Kaji worth of Rs.30,60,000/-. The said powder was tested with the help of testing kit and the test came positive showing material to be a Narcotic Drug. After completion all the formalities and an enquiry was made with the co-accused persons, the name of the present Applicant revealed. It also revealed that, the present Applicant was supplying the said Mephedrone to the persons arrested. One diary was also seized from the co-accused persons, where the name of the present Applicant is mentioned. On the basis of the said investigation the Applicant was taken into custody by way of production warrant.

3. Heard learned Counsel for the Applicant who submitted that except the CDR reports there is no other material on record to connect the present Applicant. The entry in the diary is not sufficient to show the involvement of the present Applicant in the alleged offence.

4. In support of his contentions, he placed reliance on the decision in the case of *Tofan Singh vs. The State of Tamil Nadu, reported in (2021) 4 SCC 1* and the decision of the Gujarat High Court in *Criminal Misc. Application*

No.1234/2022 (Yash Jayeshbhai Champaklal Shah vs. State of Gujarat) decided on 02.03.2022 and submitted that on the basis of the above said evidence the accused cannot be held involved in the alleged said offences.

5. *Per contra*, learned APP for the State, strongly opposed the Application on the ground that commercial quantity of the contraband article was found in possession of the co-accused. The rigor under Section 37 of the said Act will attract. He submitted that there are CDR reports showing consistent communication between the present Applicant and other co-accused. Considering the gravity of the offence, the Application deserves to be rejected.

6. On hearing both the sides and on perusal of the investigation papers, admittedly on the basis of the entry in the diary which was seized from the co-accused, the present Applicant has shown to be involved in the alleged offence. Besides this, there is a statement of the co-accused to the extent that he had procured the said contraband from the present Applicant.

7. As observed by the Hon'ble Apex Court in the case of ***Tofan Singh vs. The State of Tamil Nadu*** (supra) wherein it is 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) Bengaluru vs. Pallulabid Ahmad Arimutta and anr, reported in (2022) 12 SCC 633* alongwith the connected matter wherein also it has been held that in clear terms in *Tofan Singh vs. The 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 present Applicant appears to be on the basis of confessional statement of the co-accused and on the basis of the CDR reports. Though it is mentioned in the FIR that, there was money transaction, however, no document is collected during the investigation.

10. In the light of the above observations and considering the fact that except the above said evidence in the nature of the statement of the co-accused and the CDR reports, there is no other material to connect the present Applicant with the alleged offence. In view of that, the Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. The Application is **allowed**.

- ii. The Applicant – Shaikh Atik S/o Shaikh Latif in connection with Crime No.559/2024 registered with Police Station Panchpaoli, District Nagpur for the offence punishable under Sections, 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail unless he is required in any other offence, on executing P.R. Bond in the sum of Rs.1,00,000/- (Rs. One Lakh) with one solvent surety in the like amount.
 - iii. The Applicant shall attend the concerned Police Station twice in a month i.e. on 1st and 15 of every month.
 - iv. The Applicant shall not leave India without prior permission of the District Court, Nagpur.
 - v. The Applicant shall surrender his passport if he is having before the Investigating Officer.
 - vi. The Applicant shall not directly or indirectly make any inducement, threat or promise to any witnesses who are acquainted with the facts of the case.
 - vii. The Applicant shall not indulge himself in similar type of activities and a single registration of the offence would lead to cancellation of bail.
11. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)