



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

CRIMINAL APPLICATION (ABA) NO.639/2025

(Tanmay Akhilesh Trivedi Vs. State of Maharashtra)

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

Court's or Judge's orders

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Mr. A.A. Naik, Senior Advocate a/b. Mr. P.R. Agrawal,
Advocate for the applicant.
Mr. V.A. Thakare, A.P.P for non-applicant/State.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATED: 18.9.2025.

The applicant is apprehending arrest in Crimes No.107/2025, registered with Police Station Awadhutwadi, District Yavatmal, for the offence punishable under Sections 8(c) and 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 135 of the Maharashtra Police Act and Sections 3 and 25 of the Arms Act.

2. It is the case of prosecution that on receiving information on 27.1.2025 the report was lodged by one Sugat Kondge, the Police Constable, against Rakesh Yadav and Anup Mahesh Jaiswal for the offence punishable under Sections 8(c) and 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the officials of Local Crime Branch conducted raid at about 2.15 a.m. at Shani Mandir Chowk, Near Dakshata Petrol Pump, Pandharkawda Road, Yavatmal and intercepted two persons including one Rakesh Yadav and seized 89.57 gram M.D. Powder worth Rs.2,64,300/- and also seized a pistol with live cartridges from accused Rakesh Yadav. Anup Jaiswal was also arrested in this crime. He was released on 17.2.2025 and was also discharged from charge-sheet.

3. Rakesh Yadav, during the interrogation, disclosed the name of one Shiva @ Akash Pruthwiraj Tiwari. Accordingly, said Shiva Tiwari filed an application for grant of pre-arrest bail and was protected by Sessions Court. Rakesh Yadav during his interrogation has disclosed that contraband and pistol was provided by said Shiva Tiwari to him and, therefore, he has been implicated in Crime No.107/2025. On the basis of statement made by Shiva Tiwari, this applicant is implicated in the present crime.

4. The learned Senior Advocate for the applicant has stated that the name of co-accused Shiva Tiwari has been taken by main accused and Shiva has disclosed the name of this accused and the applicant is implicated in crime in question on the basis of statement of co-accused who is already released on pre-arrest bail. The statement of co-accused is not admissible in law as held by the Hon'ble Apex Court as well as this Court in number of decisions even in the matter involving N.D.P.S. Act, the same is not admissible as per Section 25 of the Indian Evidence Act.

5. The applicant has relied on the judgment of the Hon'ble Apex Court in Criminal Appeal No.822/2020 (Seesh Singh @ Mor V/s. State of Punjab) wherein it is held that if the accused is implicated in the matter on the basis of statement made by co-accused, then anticipatory bail can be granted. It is also observed by the Hon'ble Apex Court in Special Leave to Appeal (Cri) No.12621/2024 (Anarul S.K. V/s. The State of West Bengal) that the different yardsticks cannot be used while granting bail. It is submitted that When Shiva is already released on bail as the co-accused has disclosed his name then parity is available to this applicant. On the ground of parity, the

applicant has relied on the judgments in (i) Misc. Criminal Case No.32840/2023 (Devilal V/s. The State of Madhya Pradesh), (ii) Criminal Petition No.66/2023 (Kumar and others V/s. The State of Karnataka) and (iii) Bail Application No.372/2024 and other connected matters (Joy Mitra and others V/s. Narcotics Control Bureau Delhi) which are in respect of bar under Section 37 of the N.D.P.S. Act. It is held that if the co-accused is already enlarged on bail and though there is a difference between considerations for grant of bail and pre-arrest bail, it cannot be ignored that the trial is not likely to be concluded expeditiously and, therefore, the accused was enlarged on bail.

6. The applicant has placed reliance on the order in Bail Application No.3846/2024 (Ravi Manoj Rai V/s. Union of India and another) passed by this Court in support of his argument about inadmissibility of statement of co-accused under Section 67 of N.D.P.S. Act of which paragraph Nos.14 and 15 read as follows:-

“14. Provisions of Section 67 of the NDPS Act contemplate that the officer under Section 42 may during enquiry call for information, require production and examine any person. However, it is seen that if any confession is recorded then it is inadmissible without corroboration of the same.

15. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial derision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases

one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

37. Offences to be cognizable and non-bailable.:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

7. Considering the law laid down by the Hon’ble Apex Court and the different High Courts, prayed to protect the applicant by granting bail.

8. The learned A.P.P. opposed the application stating that there is a bar under Section 37 of the N.D.P.S. Act to release the applicant on bail. The material collected during the investigation shows active involvement of the present applicant in the commission of offence. The commercial quantity was recovered from the co-accused and said M.D. Powder and gun was provided by this applicant. The learned A.P.P. has relied on the judgment of the Hon’ble Apex Court in case of *Narcotics Control Bureau V/s. Mohit Aggarwal* reported in **AIR 2022**

SC 3444 wherein considering Tofan Sing V/s. State of Tamil Nadu in para 17 held as under:-

“17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.”

9. Learned A.P.P. has also submitted that though the co-accused is released on bail the application is filed for cancellation of bail. The learned A.P.P. has also relied on the judgment of the Hon'ble Apex Court in Special Leave to Appeal (Cri) No.12621/2024 (Anarul S.K. V/s. The State of West Bengal) in which direction was given to the State to consider as to whether it proposes to file an application for cancellation of bail granted to the other co-accused. In *State of Kerala and others V/s. Rajesh and others* reported in **2020 12 SCC 122** relying on Section 37 of N.D.P.S. Act it is held that the reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Hence, prayed to reject the application.

10. Heard both sides and perused the record.

11. The applicant is claiming parity as accused Shiva Tiwari is already released on bail though the co-accused has disclosed his name, the trial Court has granted him bail. Said Shiva Tiwari has disclosed the name of present applicant. Though the learned A.P.P. has stated that the application for cancellation of bail of said Shiva Tiwari is filed, the applicant has filed on record the order passed on application for cancellation of bail and said application is rejected on 8.9.2025. The arguments are based on the provisions of Section 67 of N.D.P.S. Act. The admissibility of the confessional statements of accused recorded under Section 67 of N.D.P.S. Act is critically examined by the Hon'ble Supreme Court in case of Tofan Singh and laid down that said confessional statements are not admissible in evidence. It is seen that the said confessional statements recorded under Section 67 of the N.D.P.S. Act are clearly hit by the provisions of Section 25 of the Indian Evidence Act.

12. Considering the law laid down by the Hon'ble Apex Court and the judgments on which the learned Senior Advocate has relied, it appears that the said confessional statement cannot be considered for registration of offence. The evidentiary value of the statement of co-accused is considered as per Section 25 of the Indian Evidence Act. The co-accused is already released on bail. The different yardsticks cannot be applied for the accused who is having similar role. The prosecution has relied on the C.D.R. Report which connect the accused with the crime as there are phone calls from this applicant and co-accused at the relevant time. It is seen that the accused is implicated on the basis of confessional statement recorded under Section 67 of N.D.P.S. Act which is clearly hit by Section 25 of the

Evidence Act. If the statement of co-accused is kept away from the purview of consideration then merely on the basis of C.D.R. records, *prima facie*, conviction of the applicant cannot be sustained. Needless to state that it shall be open to the prosecution to prove the same in trial. The case of *Narcotics Control Bureau V/s. Mohit Aggarwal* (supra) is about regular bail and other material against accused is considered, which is not the case in hand.

13. For the aforesaid reasons, the application is allowed.

(i) It is directed that in the event of arrest of the applicant- Tanmay Akhilesh Trivedi, in connection with Crime No.107/2025, registered with Police Station Awadhutwadi for the offence punishable under Sections 8(c) and 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 135 of the Maharashtra Police Act and Sections 25 and 3 of the Arms Act, he be released on bail on furnishing P.R. Bond in the sum of Rupees Fifty Thousand with two solvent sureties in the like amount.

(ii) The applicant shall not in any way tamper with the prosecution evidence.

(iii) The applicant shall not pressurize or threaten the prosecution witnesses.

(iv) The applicant shall attend the concerned police station twice in a week i.e. on every Monday and Thursday between 1:00 p.m. and 2:00 p.m.

(v) The applicant shall co-operate with the investigating officer.

(MRS. VRUSHALI V. JOSHI, J.)