IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 572 OF 2026

Lakhan Vedmani Dubey .... Applicant
V/s.
The State of Maharashtra ...Respondent

Ms. Mallika Sharma a/w. Mr. Ayaz Khan and Ms. Zehra Charania for the Applicant.

Mr. V.A. Kulkarni, APP for the Respondent – State.

Mr. Vishal Tejale attached to Crime Branch, Unit – 11, Kandivali, present.

CORAM: SHYAM C. CHANDAK, J.
DATED : 11th AUGUST, 2026

P.C. :-

1. Heard learned Counsel for the parties. Perused the record. Mr. Kulkarni, learned APP tendered photocopy of an entry in *Khabar* Register, provided by Mr. Tejale, PSI attached to DCB, CID, Unit – 11, Mumbai, which is claimed to be the compliance with Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It is taken on record and marked as Exhibit "X".

2. The Applicant seeks his release on bail in Special Case No.2120/2025 pending on the file of the learned Special Judge, Sessions Court, Greater Mumbai, arising out of C.R.No.27/2025 registered with DCB, CID, Unit-11, Mumbai, originally at C.R.No.

266/2025 with Kandivali Police Station, Mumbai (E) for the offence punishable under Sections 8(c), 29 and 22(c) of NDPS Act.

3. The prosecution case is that on 12.04.2025, informant Mr. Kadam, PHC received a secret information that the Applicant would come in the area of Kandivali West Railway Station to sell narcotic drug 'MD'. The informant conveyed that information to his superior Mr. Nivatkar, Sr.P.I., who, at 13.25 hours, constituted a team of police headed by Mr. Kakade, PI and authorised to effect the raid. At about 16.40 hours, the police team alongwith two panchas went to Kandivali West Railway Station and lay in ambush there, near Hotel Sarovar. But the Applicant did not come there. After some time the informer told that the Applicant would come at 21.30 hours, near Sunshine Shop, in front of Shatabdi Hospital, S.V. Road. The team went there and laid a trap. The Applicant came there alongwith one person named Saifulla Abdul Shaikh. Seeing the police the two tried to run away and while running the Applicant threw a plastic bag which was in his possession. Police chased and apprehend them. On enquiry, the Applicant and his associate gave their names. Further, police followed the provisions of Section 50 of NDPS Act. On further enquiry, the Applicant told that the said bag was containing drug 'MD' and led the police and the panchas to the spot where he had thrown that bag. The bag was lying there. Police searched that bag in the presence of the panchas. It found containing 88 grams of 'MD'. It was seized recording a panchanama. The Applicant revealed that he had procured the 'MD' from co-accused Sajju @ Kamran Khan. However, Saifulla Abdul Shaikh was not involved in the crime. Accordingly, aforesaid crime came to be registered on the Report lodged by Mr. Kadam and the Applicant was arrested.

Completion of investigation, led to filing of charge-sheet. The trial Court refused the bail to the Applicant.

4. Ms. Sharma, learned Counsel for the Applicant submitted that there is non-compliance of Section 42 of NDPS Act. Considering the material on record, it cannot be accepted that the grounds of arrest were furnished to the Applicant as required in Section 47 of BNSS. She submits that although the Applicant has criminal antecedents; he is on bail in the said cases. Since there is non-compliance of the aforesaid provisions of laws, therefore, the antecedents will not come in the way of exercising discretion of bail in favour of the Applicant. Therefore, she urged to grant bail.

5. In reply, Mr. Kulkarni, learned APP states that there is proper compliance with Section 42 of NDPS Act before effecting the raid, search and seizure. He contended that, the search and seizure action was carried out in public place which is permissible under of Section 43 of NDPS Act. Therefore, even if for the sake of argument it is assumed that the provisions of Section 42 are not complied with, it will not make the search and seizure of the contraband illegal. He submitted that the grounds of arrest were furnished to the Applicant in writing as required in law. Therefore, the Applicant is not entitled for bail.

6. I have considered these submissions. On perusal of the record including the WhatsApp messages and the images of the contraband shared on WhatsApp, I found that, there is a *prima facie* case against the Applicant that at the relevant time he was found in possession of the contraband.

7. Now let us deal with the submissions by Ms. Sharma. The *Khabar* (Exh.-X) indicates that before going for the raid, the secret

information was recorded, conveyed to the superior and authorization from the superior was obtained as required under Section 42 of NDPS Act. However, Ms. Sharma contended that, the *Khabar* was not part of charge-sheet and it is afterthought. Additionally, report about the alleged search and seizure action was not submitted within 72 hours, as required under sub-Section (2) of Section 42. Therefore, she stoutly submitted that it cannot be maintained that the provisions of Section 42 were complied with. This submission, at the first blush, looks attractive, but, cannot be accepted.

8. In this regard, Section 43 of NDPS Act is relevant. It provides that any officer of any of the departments mentioned in section 42 may seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed and, detain and search any person whom he has reason to believe to have committed an offence punishable under this Act and, if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

9. As evident from record, since the Applicant did not come at the first location, therefore, the police went to the another location as told by the informer. There, when the Applicant arrived, police apprehended him and effected the search and seizure of the contraband. These facts *prima facie* indicates that, while going from one location to another, the police could not comply with Section 42 and therefore, in an exceptional situation falling under Section 43, they effected the search and seizure of the contraband.

That apart, considering the facts and circumstances of the case in its entirety, I am of the view that the non-compliance with the provisions of Section 42 is a question of fact to be decided at the trial.

10. This takes me to the second submission that the grounds of arrest were not furnished to the Applicant. To substantiate this assertion, Ms.Sharma invited my attention to two communications under Section 47 of BNSS. One mentions that the Applicant was apprehended near Sunshine Shop, in front of Shatabdi Hospital and another, state that it was at Nagori Hotel, in front of Shatabdi Hospital. However, this is not a major discrepancy. Because, both, Sunshine Shop and Nagori Hotel were located in front of Shatabdi Hospital. Ms. Sharma also challenged these communications asserting that the alleged signature of the Applicant on the 1st communication towards its acknowledgement is forged. However, this claim is completely baseless and incorrect. Because, the said signature is clearly matching with the Applicant's signature on his Affidavit about the criminal antecedents.

11. Undisputedly, the offence pertains to possession of commercial quantity of the contraband. The Applicant could not point out that *prima facie*, he is not guilty of the alleged offence. There are two criminal antecedents against the Applicant of committing similar offence in quick succession, i.e., 2023 and 2024. This conduct indicates that if bail is granted, the Applicant is likely to commit a similar offence.

12. In the wake of above, the Applicant is not entitled for bail. The Application stands rejected accordingly, and disposed of.

As an abundant caution, it is clarified that the aforesaid observations are *prima facie* in nature and confined to the determination of entitlement for bail. Said observations shall not be construed as an expression of this Court about the merits of the case. The trial Court shall decide the said case on its own merit without getting influenced by any of the said observations.

(SHYAM C. CHANDAK, J.)

PREETI HEERO JAYANI
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