IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1681 OF 2026

Arbaz Kasim Kisar Khan .... Applicant
V/s.
The State of Maharashtra ...Respondent

Mr. Ayaz Khan a/w. Ms. Zehra Charania and Ms. Mallika Sharma for the Applicant.
Mr. Vinit Kulkarni, APP for the Respondent – State.
Mr. Pushparaj Surve, API, ANC-1, CB, MBVV, present.

CORAM: SHYAM C. CHANDAK, J.
DATED : 20th AUGUST, 2026

P.C. :-

1. Heard learned Counsel for the parties. Perused the record.

2. The Applicant seeks his release on bail in Special (NDPS) Case No.669/2025 pending on the file of learned Special Judge (under the NDPS Act), Thane arising out of C.R.No.II-226/2025 registered with Kashigaon Police Station, Thane for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and Section 111 of the Bharatiya Nyaya Sanhita (BNS), 2023 on the Report dated 18.05.2025 filed by Mahesh Uddhav Velhe, PHC.

3. The prosecution case is that on 17.05.2025, at about 2200 hours, when the team of Anti-Narcotic Cell, Mira Bhayander Police Commissionerate arrived near Hindustan Petrol Pump, near Versova Bridge, Accused No.1 - Soheb Ismail Kutchi @ Reti (**A1**) was present there. His conduct was suspicious. Therefore,

police accosted him and conducted his personal search in the presence of panchas. A1 was found in possession of 61.1 grams of Mephedrone. It was seized. On inquiry, A1 revealed that he had purchased that Mephedrone from Accused No.2-Aniket Nikam (**A2**) from whom 55.6 grams of Mephedrone was seized. Accordingly, Mr. Velhe, PHC lodged the Report and present crime came to be registered. During further investigation, A3 to A9 were arrested and certain quantity of Mephedrone was seized/ recovered from them. Applicant is Accused No.4 (**A4**) who was arrested on 21.07.2025 from Goa. On completion of investigation, police submitted the charge-sheet.

The trial Court declined to release the Applicant on bail mainly on two counts. First, that the contraband seized from the possession of the Applicant, is of commercial quantity. Second, he had two similar criminal antecedents.

4. Mr. Khan, learned Counsel for the Applicant has pointed out certain discrepancies in the investigation material and contended that, same are sufficient to hold that no contraband was recovered from the Applicant and the contraband allegedly recovered by the Applicant, was foisted on him. It is submitted that, as alleged, 55.01 grams of Mephedrone was seized including the weight of the plastic packet in which it was kept. Moreover, said contraband contains four other drugs, three of which are not covered under the NDPS Act. Therefore, in any case, the said contraband was not of commercial quantity. This takes out the Applicant's case out of the rigours of Section 37 of NDPS Act. The Applicant is incarcerated for more than one year. Therefore, he may be released on bail.

5. Opposing said submissions, Mr. Kulkarni, the learned APP submitted that there is sufficient material against the Applicant that he alongwith the co-accused was dealing in the illicit drug. This fact is fortified by the recovery of the commercial quantity of the contraband at the instance of the Applicant. It is submitted that, the discrepancies are pointed out by Mr. Khan are not serious or major and the same are matters of trial. Therefore, there is a prima facie case against the Applicant. This coupled with the rigours of Section 37 of NDPS and Applicant's criminal antecedents impel to deny him bail.

6. I have considered these submissions. The 1st discrepancy is about the presence of certain police at the time of recording the Memorandum of the voluntary disclosure of the Applicant and timings of departure of said police to the place of the recovery of the contraband, by one of the two vehicles.

In this regard record indicates that, Investigation Officer Mr.Santosh Ghadge, PSI recorded the Memorandum of the voluntary disclosure of the Applicant, between 2030 hours to 2115 hours, in the presence of the panchas, Sachin Kamble-Police Inspector and, other police. Thereafter, said police team alongwith the panchas and the Applicant went to the place of the recovery by two vehicles bearing regn. Nos. MH-04-HX-0891 and MH-04-LT-9759. However, as per the daily logbook entry, Sachin Kamble-Police Inspector and two others with him had already left for the said place of the recovery by the said vehicle bearing No.9759, at left at 2000 hours, that is much prior to recording the Memorandum of the disclosure. Secondly, the recovery panchanama was concluded at 2215 hours, and till then, Mr. Sachin Kamble, PI was present there. However, as per the

logbook, the vehicle bearing No.9759 had already returned back to the ANC Unit at 2215 hours.

7. Secondly, after the allegedly recovery of the contraband by the Applicant, it was sealed in a packet and marked Exhibit "C", for identification. However, during inventory, the learned Magistrate noted that the contraband packet was Exhibit "D". Mr. Kulkarni, on instructions, submitted that it was mistake of the Investigation Officer because the contraband recovered from A3 was marked Exhibit "C", therefore, during inventory, the said mistake was cured by changing the Exhibit "C" to Exhibit "D". However, nothing is pointed from the record that to prima facie show, indeed, it was the mistake of the I.O.

8. The aforesaid discrepancies indicate a very casual approach towards the investigation. Additionally, it is may be noted that the Applicant was arrested on 21.07.2025 and the recovery is effected after eight days, i.e., on 29.07.2025, from an abandoned unlocked car which was lying in an open place easily accessible to all. Therefore, it is difficult to prima facie conclude that the Applicant made the alleged disclosure leading to the recovery of the contraband.

9. As per the report of the C.A., at Page No.313, the said contraband substance was a mixture of five drugs namely Mephedrone, Methamphetamine, Ephedrine, Phenacetin, Lidocaine and Dimethyl sulfone. The last three are neither narcotic nor psychotropic as claimed by Mr. Khan. This assertion is not controverted by the Respondent. The contraband was weighed alongwith the plastic packet in which it was kept. Therefore, it cannot be denied that the contraband was an intermediate quantity, not commercial. To fortify this conclusion,

a useful reference may be maid to the Order of the Hon'ble Supreme Court in *Sentu Seikh vs. State of West Bengal, Cril. Appeal No.86 of 2026*. Therein, the Appellant, Sentu Seikh, was allegedly found in possession of 514 grams of what appeared to be Heroin. But, it was stated to be a combination of Morphine, Codeine and Thebaine. It gave rise to a the question as to whether Section of the NDPS Act would have application to the case on hand, given the fact that the prosecution has not separated the three ingredients allegedly found with the appellant, so as to quantify them. Therefore, the top Court find no grounds to continue with the incarceration of the appellant, at that stage and granted bail. Similarly, in Ahmed *Raja Mohd. Rafiq Khan vs. State of Maharashtra, BA/2205/2024* (Bom), as alleged in the FIR, the applicant Rafiq Khan was found in possession of 65 grams mephedrone. The chemical analysis report specifically showed that alongwith mephedrone, ketamine was also detected. This Court, therefore, noted that the commercial quantity for the contraband ketamine is 500 grams. Since some part of the contraband was ketamine, therefore, it is observed that if it was more than 15 grams, the quantity of mephedrone would go below 50 grams, which in turn would be intermediate quantity. The applicant had no criminal antecedents. These facts inured to the benefit of the applicant. Therefore, this Court directed his release on bail. Thus both these Orders lien in favour of the Applicant.

10. However, in the case in hand, the Applicant has two similar criminal antecedents. Yet, having regard to the above noted discrepancies and the fact that the Applicant is in jail for last one year, he may be released on bail. Thus, I am persuaded to grant bail. Hence, following Order is passed :-

(i) The Applicant – Arbaz Kasim Kisar Khan shall be released on bail in Special (NDPS) Case No.669/2025 pending on the file of learned Special Judge (under the NDPS Act), Thane arising out of C.R.No.II-226/2025 registered with Kashigaon Police Station, on his executing P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount.

(ii) The Applicant shall mark his attendance at Kashigaon Police Station, Thane on 1st and 16th day of each calender month between 11:00 a.m. to 2:00 p.m. till conclusion of the trial.

(iii) The Applicant shall regularly attend the proceedings before the jurisdictional Court unless exempted by the said Court, for the reasons to be recorded in writing.

(iv) The Applicant shall not tamper with the prosecution evidence and shall not influence upon the prosecution witnesses to prevent them from deposing against them.

(v) The Applicant shall not indulge in identical activities for which he has been arraigned in this case.

(vi) On being released from jail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(vii) After release from jail, the Applicant shall not enter in Mumbai and Thane District for one year, except for marking his attendance in the police station and before the trial Court.

(viii) It is clarified that any observation made in the present Order are for the purpose of deciding the present Bail Application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

11. Bail Application stands disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)

PREETI HEERO JAYANI
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