

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4541 OF 2024

Sohrab Mohd Shafi Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Adv. Munira Palanpurwala a/w Sumaiya Khan and Deepa Amti for
the Applicant

Ms. Veera Shinde, APP for the Respondent-State.

Mr. Abhijit Abhirao, P.I.ANC Ghatkopar

CORAM: R. M. JOSHI, J.

DATED: 06th May, 2026

PC:-

1. Applicant seeks bail in connection with CR. No. 17 of 22023 registered with ANC Narcotic Cell, Ghatkopar Unit Police Station, Mumbai for the offences punishable under Sections 8(c) 22(b), 22(c) and 29 of the NDPS Act.
2. In short, it is a case of the prosecution that present applicant was accosted along with co-accused and at their instance contraband was seized. On completion of the investigation, chargesheet came to be registered.
3. Learned counsel for the applicant submits that

accused no.3 have been enlarged on bail by order dated 23.03.2026 passed in Criminal Bail Application bearing No. 3803 of 2024. She drew attention of this Court to the observations are made therein in paragraph nos. 4, 5 and 6. According to her the accused who is enlarged on bail also had two criminal antecedents against him and there is no reason not to apply parity.

4. Learned APP opposed the application, she was unable to show any difference in the roles of the present applicant as compared to accused no.3 who is enlarged on bail. She however, claims that there are two antecedents against the applicant.

5. This court has made following observations in the order dated 23.03.2024, passed in Bail Application No. 3803 of 2024.

"4. Insofar as the present case is concerned admittedly the personal search of the applicant was taken by the concerned officer and nothing was found from his personal search. It is thereafter as per case of the prosecution a commercial quantity of contraband was seized from the present applicant from his bag. In such case, compliance of Section 50 is mandatory. Perusal of the seizure panchanama indicates that though the co-accused had communicated

of his right of being search only gazetted officer or a Magistrate, no such right was appraised to the applicant. Needless to say that any recovery pursuant to such the non-compliance of mandatory provision would be rendered illegal.

*5. It would be relevant to take note of observation made by Hon'ble Supreme Court in case of **Sanjeev (supra)** which came to be passed by bench of equal strength of judgment in case of **Baljinder Singh (supra)**. The observations made in para 9 of reads thus :*

“9. We have checked the original record to satisfy ourselves Exhibits PW8/B, PW8/C, PW8/D and PW8/E, which are arrest memos, do not reflect that any option or choice was given to the accused before their personal search was undertaken. It is true that the personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording option, was one of the reasons which weighed with the Trial Court in disbelieving the case of the prosecution”.

Thus, compliance of Section 50 is held to be necessary even if nothing is recovered from personal search of the accused.

6. Apart from this, perusal of the chargesheet indicates that investigation has been done in most possible casual manner. The F.I.R. describes accused as panch witness whereas inspite of seizure of contraband at the instance of the applicant. At the first instance, there is no record indicating the said seized contraband being kept in muddemal.

7. In aforestated facts this Court has reason to believe that applicant has not committed the crime. Merely because there are criminal antecedents against the applicant. Since, prima-facie this is found to be a possible case of false implication, application deserves to be allowed.

6. Since the exactly same role has been attributed against the present applicant as compared to accused no.3, this court finds no reason not to apply parity.

7. Hence, the following order:-

i) The application stands allowed.

ii) Applicant is enlarged on bail in connection with CR. No. 17 of 2023 registered with ANC Narcotic Cell, Ghatkopar Unit Police Station, Mumbai for enlarged on bail on furnishing PR Bond of Rs. 30,000/-

with one or two sureties in the like amount, to the satisfaction of the Trial Court.

iii) Applicant to attend each hearing of the trial court on all scheduled dates except exempted by the court.

iv) Considering the antecedent is directed to attend the concerned police station once in a month till conclusion of the trial.

8. In view of the above, application stands disposed of.

R. M. JOSHI, J.