

Prasad

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.5039 OF 2024**

Irfan Ibrahim Shaikh	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Kamlesh Satre, for the Applicant.
Ms. Sangeeta D. Shinde, APP for the Respondent - State.

CORAM: R. M. JOSHI, J.

DATED: 16TH APRIL, 2026.

PC:-

1. The Applicant seeks his release on bail in connection with CR No.126 of 2023 dated 18th March, 2023, registered with Ghatkopar Police Station, for offence punishable under Sections 8(c) read with Section 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS**').

2. In short, it is the case of the prosecution that on 17th March, 2023 Accused No.1 was apprehended with 5 grams of Mephedrone in his possession. On the basis of further investigation, involvement of the present Applicant came to be revealed. Pursuant to the statement made by the Applicant, his house was raided. In the said raid from this house 55 grams of Mephedrone with a pouch was recovered. The Applicant was arrested 4th May, 2023. since then the Applicant is in jail. On completion of investigation charge-sheet has been filed. Trial is yet to commence though the charge is framed.

3. Learned counsel for the Applicant submits that there is no conclusive evidence indicating that the seized contraband is of commercial quantity. It is his submission that there is no evidence to show the weight of the actual contraband. It is his further submission that unless the prosecution proves that the contraband seized at the instance of the Applicant is of commercial quantity, rigors of Section 37 of the NDPS Act would not apply. Apart from this, it is his submission that said recovery cannot be attributed to the Applicant as there is no further investigation showing that the premises from which the recovery was done belongs to the Applicant. It is his further submission that for almost period of three years the Applicant is in jail and the trial is not likely to get over in a reasonable period of time. He, therefore prays that the Applicant be enlarged on bail.

4. Learned APP opposed the application by citing seriousness of the crime. It is her submission that pursuant to the statement of the wife of Applicant as recorded in Panchanama, recovery of contraband namely Mephedrone of 55 grams was done and hence, it is attributable to the Applicant. It is her further submission that in view of rigors of Section 37 of the NDPS Act the Applicant is not entitled for bail as there are five criminal antecedents against him.

5. In order to apply rigors of Section 37 of the NDPS Act, the initial burden is upon the prosecution to show that the contraband seized at the instance of the Applicant is of commercial quantity. Admittedly, no actual weight of the contraband is taken during the course of investigation. Moreover, there is no separate weight of zip-lock pouch in which the contraband was found is

taken. It is thus clear that doubt is created as to whether the contraband seized weighed of commercial quantity. Apart from this, it is pertinent to note that though the prosecution claims of recovery of contraband from the premises of the Applicant, but there is no further investigation carried out in order to show that the premises belongs to the Applicant or that he had control over the same. Moreover, no statement of wife of Applicant is recorded, in whose presence recovery has been done. In absence of any such evidence this Court finds *prima facie* substance in the contention of learned counsel for the Applicant that the said recovery may not be attributable to the Applicant.

6. In the aforestated facts, rigors of Section 37 of the NDPS Act have no application to the present case. After conclusion of investigation charge-sheet has been filed. Though charge has been framed there is no progress in the trial. The trial is not likely to get over in a short period of time. Hence, following order.

ORDER

- i) The Bail Application is allowed.
- ii) In connection with CR No.126 of 2023 dated 18th March, 2023, registered with Ghatkopar Police Station, for offence punishable under Sections 8(c) read with Section 22(c) and 29 of the NDPS Act, the Applicant be 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) The Applicant shall attend all dates of hearing before the Trial Court unless exempted.
- iv) The Applicant shall attend concerned police station once in a month till commencement of the trial.

7. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(R. M. JOSHI, J.)