

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.393 OF 2025

Azhar Asmat Ansari	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Ayaz Khan a/w Dilip Mishra, Zehra Charania and Mallika
Sharma, for the Applicant.
Ms. Shilpa K. Gajre-Dhumal, APP for the Respondent - State.
API – Maitranand V. Khandare, Sakinaka Police Station, present.

CORAM: R. M. JOSHI, J.

DATED: 10th APRIL, 2026.

PC:-

1. The Applicant seeks his release on bail in connection with CR No.787 of 2023 dated 8th August, 2023, registered with Sakinaka Police Station, Brihanmumbai City, for the offence punishable under Sections 8(c), 22(c), 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. It is the case of the prosecution that an information was received by API – Khandare about the present Applicant and the co-accused coming at a particular spot with contraband. A trap was laid. The Applicant came to be accosted. After compliance of Section 50 of the Act, his personal search was taken from which 200 grams of Mephedrone was found on his person, so also 7.780 Kgs. of Mephedrone was recovered from bag. In connection with this crime as many as twenty accused came to be arrested. The

Panchanama was drawn of the seized contraband. Inventory Panchanama under Section 52A was prepared. Samples were drawn before the Magistrate and sent to FSL for its examination. Chemical Analyzer report indicates seized article to be Mephedrone.

3. Learned counsel for the Applicant submits that there is non-compliance of mandatory provision of Section 42 of the Act. In this regard, he drew attention of the Court to the FIR as well as the Panchanama which indicate that an information was received by API – Khandare. According to him, there is no material on record to show that he reduced the said information in writing and it was communicated to his immediate superior in compliance of Section 42(2) of the NDPS Act. It is his further submission that apart from the said non-compliance, there is non-compliance of Section 50 of the Act as the written notice purportedly given to the Applicant is not in consonance of Section 50 of the Act, as it seems to have been given after his arrest. He further argues that there is non-compliance of Section 52A as the seized samples though drawn on 10th November, 2023 they were sent on 22nd November, 2023. To support his submission that on this ground also the Applicant is entitled for bail, he placed reliance on judgments of Hon'ble Supreme Court in case of *Rambabu v. State of Rajasthan & Anr.*¹ and *Wajid Ali @ Tinku v. State of Rajasthan*². Apart from this, it is his submission that out of twenty accused persons, 10 have been enlarged on bail including the co-accused, at whose instance commercial quantity of Mephedrone was seized. It is his

1 Spl. Leave to Appeal (Crl) No.5648 of 2025 dated 13.08.2025.

2 Spl. Leave to Appeal (Crl) No.7049 of 2025 dated 09.02.2026.

submission that it becomes immaterial as to the quantity which was seized from the present Applicant as this is the first offence alleged against him. To support his submission, he placed reliance on following judgment and orders:

Non-compliance of Section 42:

1. *Directorate of Revenue Intelligence & Anr. v. Mohd. Nisar Holia*³
2. *State of Rajasthan vs. Jag Raj Singh @ Hansa*⁴
3. *Krishna Kanwar @ Thakuraeen vs. State of Rajasthan*⁵
4. *A. Nasar Cherukara vs. R.G. Gokhale & Ors.*⁶
5. *Union of India & Ors. Vs. A. Nasar Cherukara*⁷
6. *Rajaram Kadu vs. The state of Maharashtra*⁸

Variance in the information note and copy sent to the Superior:

1. *Sanobar Shafiq Khotal vs. The State of Maharashtra*⁹
2. *Mehadi Munavar Majid vs. The State of Maharashtra*¹⁰
3. *Imran Jahurul Khan vs. State of Maharashtra*¹¹

4. Learned APP opposed the application by pointing out that herein this case huge quantity of Mephedrone has been seized at the instance of the Applicant and the co-accused. According to her, during the course of trial the prosecution would be in a position to explain the delay in sending the samples to Chemical Analyzer. It is her further submission that there is ample evidence on record to indicate compliance of Section 50 of the Act in view of

3 2008 (2) SCC 370, Supreme Court

4 2016(11) SCC 687, Supreme Court

5 2004(1) Crimes 390, Supreme Court

6 Criminal Application No. 355 of 2010 in Appeal/1057/2008, Bombay High Court

7 SLP/7289/2011, Supreme Court

8 BA/2108/2016, Bombay High Court

9 BA/3337/2021, Bombay High Court

10 BA/3493/2021, Bombay High Court

11 BA/3004/2025, Bombay High Court

the reference of oral communication of the right of the Applicant to be searched in presence of a gazetted officer or a Magistrate. Insofar as compliance of Section 42 is concerned, she drew attention of the Court to the General Diary Entry dated 23rd September, 2023 which according to her indicates reducing of secret information in writing by person who received it. Similarly, reference is made to the letter dated 23rd September, 2023 addressed by API – Khandare to Senior Police Inspector, Sakinaka Police Station. This according to her is compliance of Section 42(2) of the Act.

5. *Prima facie* perusal of the record indicates that the Applicant was apprised of his right to seek search in presence of a gazetted officer or a Magistrate and there is a reference about the same made in the Panchanama. Thus, it cannot be said that this is a case wherein there is non-compliance of Section 50 of the Act. Similarly, insofar as delay in compliance of Section 52A is concerned, in view of the judgment in the case of ***Narcotics Control Bureau v. Kashif***² as held by the Hon'ble Supreme Court this does not become a ground for grant of bail as the same can be explained by the prosecution during the trial.

6. Insofar as Section 42 of the Act is concerned, *prima facie* perusal of the record indicates that as per the case of the prosecution, API – Khandare has received the secret information from the Informant. There is nothing on record to show that he reduced said information in writing. The General Diary Entry

indicates that the same has not been taken by API – Khandare. Thus, there is non-compliance of Section 42 of the Act. Apart from this, Section 42(2) of the Act requires mandatory communication of such information by the officer receiving the information to his immediate superior within a period of 72 hours. In this regard, prosecution has placed reliance on letter dated 23rd September, 2023. Even if it is accepted that this was intended to communicate the information received, a perusal of the said letter shows that the information was not at all communicated to the superior officer. The whole purpose of reducing the information in writing and its communication to the immediate superior officer is to ensure that there is no case of false implication and that the record is not fabricated at later point of time. This provision being mandatory in nature, non-compliance thereof would affect subsequent search and seizure.

7. *Prima facie* perusal of the record indicates that there is non-compliance of Sections 42(1) and 42(2) of the Act. Apart from the said fact, the co-accused against whom there is allegation of seizure of contraband of commercial quantity has been enlarged on bail, this Court finds no justification for refusing bail.

8. The Applicant is in jail since 24th September, 2023 and has undergone 2 years and 5 months of imprisonment. The charge is not framed as such the question of trial getting over in a reasonable period of time does not arise. Hence, the following order.

ORDER

- i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount;
- ii) The Applicant shall attend the Trial Court concerned on each and every date unless exempted by the order of the Trial Court concerned;
- iii) The Applicant shall also attend the Police Station concerned once in a month on first Monday between 11:00 a.m. to 02:00 p.m. till the charges are framed;
- iv) If the Applicant has not deposited his passport, if any, the Applicant shall deposit the same with the Police Station concerned;
- v) The Applicant shall not leave India, without the permission of the Trial Court;
- vi) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- vii) The Applicant shall inform his latest place of residence and contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Police Station concerned;

viii) The Applicant to co-operate with the conduct of the trial;

ix) Any infraction of the aforesaid conditions shall entail cancellation of bail.

9. Application is allowed in the above terms and is accordingly disposed of.

10. 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.)