

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 434 OF 2025**

Mustafa Abdul Rahim Rajkotwala ...Applicant
Versus
State Of Maharashtra ...Respondent

Mr. Sherali S. Khan, *for the Applicant.*
Ms. Gauri S. Rao, *APP for the State-Respondent.*
PI – Nitin T. Keram, *ANC Bandra Unit, is present.*

CORAM DR. NEELA GOKHALE, J.
DATED: 9th FEBRUARY 2026

PC:-

1. The Applicant seeks his release on bail in connection with C.R. No. 21 of 2023 dated 11th March 2023 registered with the ANC, Bandra Maidan Unit for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”).

2. There are in all three accused. The present Applicant is Accused No.2 and Accused No.3 is on bail as a non-commercial quantity of contraband was recovered from him.

3. The facts of the case, in brief, are that on 10th March 2023, the officials of the ANC, Bandra Maidan Unit, while on patrolling duty, spotted two persons loitering in suspicious circumstances and therefore, apprehended the said two persons. One was Mr. Mohd. Shahid Mohd. Saeed Qureshi and the other was the present Applicant namely, Mustafa Abdul Rahim Rajkotwala. After following the due process of the NDPS Act, two panchas were called to conduct the search and seizure proceedings. The search of the present Applicant resulted in the recovery of 200 grams of white coloured powder namely, Mephedrone and while the search of the co-accused resulted in the recovery of 100 grams of Mephedrone. Pursuant to the FIR was registered against the Applicant and the co-accused, the Applicant was arrested on 10th March 2023.

4. The Applicant made an application seeking bail before the Special Judge (NDPS), City Civil and Sessions Court, Greater Bombay. However, by order dated 2nd December 2024,

the said application was rejected. Hence, the Applicant is before this Court seeking the relief as prayed.

5. Mr. Sherali Khan, learned counsel for the Applicant, submits that the compliances under the NDPS Act are not followed. He submits that there is non-compliance of Sections 42, 50 and 52A of the NDPS Act. He further submits that the Applicant is in custody for 2 years and 9 months and the trial is not yet concluded. On the ground long incarceration, he prays that the Applicant be released on bail.

6. *Per contra*, Ms. Gauri Rao, learned APP, submits that the accused, including the Applicant were found behaving in suspicious manner and hence, they were apprehended. The search of their persons resulted in the recovery of 200 grams of Mephedrone from the present Applicant. She submits that 200 grams of Mephedrone is above the commercial quantity and hence, *prima facie* the Applicant has committed the offence as alleged. While addressing the arguments pertaining to the non-compliance of the NDPS Act raised by Mr. Khan,

Ms. Rao points to the documents in the charge-sheet. She submits that the Applicant was arrested on 11th March 2023 and the Investigating Officer addressed a letter to the Magistrate immediately on 13th March 2023. The Magistrate has given the date for conducting of sampling as 27th March 2023; the inventory date is 27th March 2023 and the certification has also been done on the same date. She submits that there is no lapse on the part of the prosecution or the Investigating Officer.

7. To the arguments of Mr. Khan that the Section 50 notice being given to the Applicant was not recorded in the panchanama, Ms. Rao brings to my attention the said notice, which clearly indicates that the Applicant was unable to write or read and hence, the police officer has noted the said remark on the Section 50 notice. The said officer has also put his signature as an endorsement. This fact is also noted in the panchanama, which clearly states that since the Applicant is unable to write or read, the endorsement was made by the

officer in that regard. Hence, according to Ms. Rao, there is compliance of Section 50 of the NDPS Act. She further submits that the charges are framed and on instructions from the learned prosecutor appearing in the matter before the Trial Court as well as the Investigating Officer, the prosecution intends to examine only 11 to 12 witnesses. The examination of the first witness is to commence on 16th February 2026. Considering that a huge commercial quantity of Mephedrone was recovered from the Applicant, she prays that the Bail Application be rejected.

8. I have heard learned counsel appearing for the respective parties and perused the record with their assistance.

9. Insofar as the objections raised by Mr. Khan regarding non-compliance of the provisions of the NDPS Act are concerned, considering the documents and dates indicated by Ms. Rao, it appears that the seizure was done on 11th March 2023 and the letter to the Magistrate was immediately written

by the Investigating Officer on 13th March 2023. The Magistrate gave the date as 27th March 2023 for the carrying out of sampling. Accordingly, the inventory panchanama was also recorded on 27th March 2023, on which date the Magistrate issued its certification. Mr. Khan has attempted to argue that the certificate issued by the Magistrate is not in the prescribed format, however, the said discrepancy, if any, will be considered during the trial. I have also perused the Section 50 notice given to the Applicant and the endorsement made on the same, which is noted in the panchanama as well. Hence, I am satisfied that the compliance under the NDPS Act are completed. Insofar as the argument of Mr. Khan relating to the long incarceration is concerned, as stated on instructions by Ms. Rao that the recording of evidence is to commence on 16th February 2026 and the prosecution intends to examine only 11 to 12 witnesses, in my view, the trial is likely to conclude within the foreseeable future.

10. Considering the aforesaid factual matrix, I am unable to record a finding that there are reasonable grounds for believing that the Applicant has not committed the said offence. The maximum sentence prescribed for the said offence is between 10 to 20 years and considering the *prima facie* finding, this is not a case of long incarceration.

11. The material before this Court includes the fact that 200 grams of Mephedrone i.e. huge commercial quantity of contraband was recovered from his personal possession. In a recent decision in the matter of **Union of India Vs. Vigin K. Varghese**¹, the Supreme Court has observed as under:

“17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and

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grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

18. ... offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure."

12. In view of the factual matrix and the legal position, I am of the view that this is not a fit case for grant of bail.

13. Accordingly, the Bail Application is rejected.

(Dr. Neela Gokhale, J)