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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1685 OF 2025

Jesabhia Motabhai Mali .. Applicant

versus

The State of Maharashtra .. Respondent

Mr.Manoj R. Gowd with Adv.Kavita N.Durgapal for the Applicant.

Mr. H.J. Dedhia, APP for the Respondent – State.

Mr.Mahesh Mule, SPP with Ms.Nidhi Narwekar for the Respondent.

Mr.Atmaji Sawant, Sr.PI, DCB CID Unit-7 is present in Court.

CORAM : R. M. JOSHI, J.
RESERVED ON : 24TH MARCH, 2026
PRONOUNCED ON : 6TH APRIL, 2026

P.C. :

1 The Applicants seek bail in connection with Crime No.12/2024 registered with ANC, Ghatkopar Unit, Mumbai for the offences punishable under Sections 8(C), 22(C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. On 15.02.2024, PI Sawant received specific intelligence about a lady receiving significant quantity of Mephedrone (MD) for sale

in Mumbai. A trap was laid. A lady was found in suspicious circumstances. The said lady attempted to flee, however, was apprehended. Two panch witnesses were summoned. After due compliance of Section 50 of the Act, search was conducted and during the said search, 641 gm of MD was recovered from her. During interrogation with her, name of co-accused No.2 came to be revealed. From accused No.2 3 kg of MD was recovered. During inquiry with him, names of accused Nos.3 and 4 surfaced. These accused persons were accosted at Surat and were brought to Mumbai. Further investigation led to the recovery of more than 122 kg MD from a factory in District Sangli. In connection with the crime accused Nos.5 to 10 came to be arrested. The investigation further revealed involvement of the present applicant i.e. accused No.11 who is said to have been involved in the organised/systematic syndicate dealing in narcotic drugs. On conclusion of investigation against applicant and co-accused charge-sheet came to be filed against them.

3. Applicants claims that, no narcotic drug/contraband was seized from him and as such, there is no evidence to connect him with the crime. According to him, except for the alleged statement of the co-accused, there is absolutely no evidence in order to show his

involvement therein. It is also claimed that, other persons who are also working as Angadiya are not made as accused, however, were made as witnesses. He further claims to have not been provided with grounds of arrest.

4. Learned counsel for the applicant submits that there is absolutely no evidence on record to connect the applicant with the crime in question. His submission is based upon the argument that there is no documentary evidence in order to prove the nexus between the applicant and the recovery of contraband substance. According to him, the so called confessional statement or statement of the co-accused under Section 67 of the Act is not evidence which could be relied upon during trial. On the point of non providing of the grounds of arrest he contends that in view of the judgments of the Hon'ble Supreme Court in case of Vihan Kumar and Pankaj Bansal, applicant is entitled for bail. It is also contended that since 06.04.2024 applicant is in jail and hence, on long incarceration is entitled to be released from jail. To support his submissions, he placed reliance on the judgment in case of Nishant Modi and Hanumant Choudhari.

5. Learned APP opposed the said contention by pointing out the gravity of the crime in view of recovery of huge quantity of MD contraband over 120 kg. It is his submission that 3 accused persons from UAE are deported in connection with this crime. On the point of merit of the present application, it is argued that there is sufficient material on record to show involvement of the applicant in this crime. In this regard, reference is made to the statements of witnesses as well as CDR which according to him more than sufficiently proves the involvement of the applicant in the serious crime i.e. one in hand. He opposed grant of bail by referring to the provisions of the NDPS Act, more particularly Section 37 of the Act thereof and the case law.

6. This is not a case as sought to be canvassed by learned Counsel for the Applicant that except for the statement of co-accused there is no other evidence in order to accept involvement of the Applicant in this Crime. Apart from this, the Applicant cannot be entitled to seek bail by alleging that other Angadiyas are not made accused but they are made as witnesses. It is pertinent to note that first of all there is no such material on record to hold so and in any case, the Applicant cannot seek benefit of lacunas in the investigation.

7. It is the case of the Applicant that he works as Angadiya and has nothing to do with the crime in question. The question arises at this stage for consideration is as to whether there is any evidence in the charge-sheet in order to indicate that there is complicity of the Applicant in this crime. Though the Applicant is working as Angadiya, prima facie perusal of the record indicates that there are phone calls between him and the co-accused including wanted accused and also accused who operates from foreign country. For the purpose of constituting crime under the NDPS Act, possession of contraband is not decisive factor. No doubt, possession of the contraband constitutes an offence however, at the same time, illicit trafficking of Narcotic Drugs and Psychotropic Substances also amounts to offence. It would be relevant to take note of Section 2(viii b) of the act which reads thus :-

(viii b) “illicit traffic” in relation to narcotic drugs and psychotropic substances, means -

- (i) cultivating any coca plant or gathering any portion of coca plant;
- (ii) cultivating the opium poppy or any cannabis plant;
- (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing concealment, use or consumption, import inter-State, export inter-State,

import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities, and

(3) xxx

8. The Court, therefore, only needs to consider as to whether there is such material on record which would indicate abetment or conspiracy in doing the aforementioned activities. At this stage, it would be relevant to take note of the facts of the present case which are peculiar in nature. The record indicates that the arrest of a lady with contraband MD led to the involvement of number of accused in the crime. The investigation conducted till the date indicates about this being a syndicate activity carried out by the accused persons. In connection with this crime, raid conducted on a factory at Sangli led to seizure of over 122 kg MD. The evidence on record on the basis of

statement of witnesses so also electronic record more than sufficiently demonstrates that this is a case of conspiracy for committing offence under NDPS Act. In the light of these facts, there is sufficient material on record in the electronic form indicating involvement of the Applicant in this crime.

9. While deciding application for bail, the Court can not forget that the aims and objects of the Act and its intention to curb the menace of Narcotic Drug which has ill effect on society at large. The Act also aims at preventing illicit trafficking and needless to say that the financing is integral part of the illicit trafficking of Narcotic Drugs. Even such participation on the level of either providing finance or helping the accused to transfer money cannot be underestimated. Once evidence is found against the Applicant connecting him with the crime, wherein recovery of contraband is over 120 kg, the embargo of Section 37 of the Act would certainly apply.

10. Insofar as the information of the ground of arrest is concerned, reliance is sought to be placed on the judgments of the Hon'ble Supreme Court in case of Vihaan Kumar Vs. State of Harayana, 2025 SCC OnLine SC 269, Prabir Purkayastha Vs. State (NCT of Delhi),

(2024) 8 SCC 254. A reference is also made to the judgment of Division Bench of this Court in case of Hanuman Choudhary Vs. The State of Maharashtra in Criminal Writ Petition (Stamp) No. 17755 of 2024, decided on 25.10.2024, wherein it is held that non communication of grounds of arrest to the accused is violation of fundamental right and statutory right of the applicant.

11. In this regard however, it is pertinent to note the judgment of Hon'ble Supreme Court in case of State of Karnataka Versus Sri Darshan Etc., **2025 INSC 979** wherein after considering all previous judgments on issue it is held as under:

“20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally (2024) 7 SCC 576 represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima

facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.”

12. After the passing of the order by the Division Bench of this Court in case of Hanuman Choudhary (supra), the Hon’ble Supreme Court has held that, unless prejudice is shown, even in case of lapses in providing of the grounds of arrest would not *ipso facto* entitle an accused to get bail.

13. Learned counsel for the applicant submits that Co-ordinate Bench of this Court in case of Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID in Criminal Writ Petition No. 5552 of 2025, decided on 10.03.2026, has granted bail to the accused therein.

14. A perusal of the judgment in case of Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID (supra) shows that the judgment in case of State of Karnataka Versus Sri Darshan Etc. (supra) was taken into consideration however, it was held that in the facts and

circumstances of the said case, the same does not assist the case of prosecution. The observations made in the said judgment more particularly in paragraph No. 16 indicates that in the said case, the arrest of the petitioners was done without issuing notice under Section 35(3) of BNSS, though it was warranted. Similarly, in the said case as observed in paragraph No.26, common grounds of arrest were furnished to both petitioners and that they could not offer satisfactory explanation of allegation. Thus, it cannot be said that the said judgment came to be passed by distinguishing the judgment of Hon'ble Supreme Court in case of State of Karnataka Versus Sri Darshan Etc. (supra), but it was passed considering difference in facts of both cases. Most importantly the judgment in case of Mimit Ajit Bhuta Versus The State of Maharashtra through DC CID (supra) does not pertain to case under NDPS Act, whereas there are strict provisions for grant of bail under Section 37 of the NDPS Act, in case of commercial quantity of the contraband is seized from accused.

15. Insofar as the claim of the Applicant with regard to grant of bail for the reason of long incarceration is concerned, a reference can be made to the judgment of the Hon'ble Supreme Court in case of State of Madhya Pradesh vs. Kajad, **2001(7) SCC 673** wherein the scope of

Section 37 in the light of the scheme of the Act was considered and it is observed that “A bare perusal of Section 37 of the Act leaves no doubt in the mind of the Court that the person accused of an offence punishable for a term of imprisonment of 5 years or more shall generally be released on bail. Negation of bail is a rule and its grant is an exception under Sub-Clause (ii) of Clause B of Section 37(1). For granting bail, the Court must on the basis of record produced before it be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

16. Similarly, in case of NCB vs. Mohit Aggrawal, (2022) 8 SCC 374, it is held that the length of the period of his custody or the fact that the charge-sheet has been filed and trial has commenced are by themselves not considerations that can be treated as persuasive ground for grant of relief to the Respondent under Section 37 of the NDPS Act.

17. In view of above discussion, this Court is of the opinion that there is no merit in the case. Applicant is not entitled to be enlarged on bail. Accordingly, the applicant stands rejected.

(R. M. JOSHI,J.)