

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1918 OF 2025**

Danish Rafiq Fansophkar

... Applicant

Versus.

State Of Maharashtra

... Respondent

Mr. Ayaz Khan a/w Zehra Charania a/w Mr. Dilip Mishra a/w Ms. Mallika Sharma, for the Applicant.

Ms. Anuja Gotad, APP for the Respondent – State.

PSI- S. N. Raskar, Goregaon Police Station, Raigad, is present.

CORAM : ASHWIN D. BHOBE, J.

DATE : 10th June, 2026.

P.C. :

1. Heard. Mr. Ayaz Khan, learned Advocate for the Applicant and Ms. Anuja Gotad, learned APP for the Respondent-State.

2. By the present Application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), the Applicant seeks regular bail in Crime No. 73 of 2024 registered at Goregaon Police Station, Dist. Raigad, for offences punishable under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (“NDPS Act”). There are two accused in the present crime. Said crime is registered as Special NDPS No. 36/2024 and is

pending before the Special Judge Mangaon, Dist. Raigad (Special Court).

3. The Applicant is Accused No. 2, whereas Samir Abdulkalam Shekhdare is Accused No. 1 in Special NDPS No. 36/2024.

4. Applicant was arrested on 17.05.2024 and has been in jail since then. The Bail Application at Exhibit-6, filed by the Applicant in Special NDPS No. 36 of 2024, was rejected by the Special Court on 20.08.2024.

5. The prosecution case is that while the police were patrolling, they received information that two persons were travelling on a motorcycle carrying contraband. They were intercepted at Mhouje Mhasala-Goregaon Road at 00.35 hours. Accused No. 1 was the rider of the scooter, whereas Accused No. 2 was the pillion rider. A search of the dicky of the said motorcycle led to the recovery of 1.35 kgs of Charas in a red cover, concealed in a white plastic bag. After compliance with all the provisions of the NDPS Act, Accused No. 1 and the Applicant were arrested.

6. Mr. Ayaz Khan, learned Advocate for the Applicant, submits that the Applicant and Accused No. 1 were friends and were travelling on the motorcycle. He submits that the mere fact of the Applicant being a friend of Accused No. 1 would not lead to the conclusion that the Applicant was aware of the Charas being carried by the Accused in the dicky of his motorcycle. He submits that the material on record do not show the Applicant's conscious possession of the Charas. He further submits that there is no material indicating that the Applicant had knowledge of, or was in conscious possession of, the Charas recovered from the dicky. He relies on the decisions of the Hon'ble Supreme Court in the case of *Narcotics Control Bureau, Jodhpur vs. Murlidhar Soni and Ors.*¹ and the decision in the case of *Ankit vs. Central Narcotics Bureau*² dated 05.02.2026 passed in Criminal Appeal No. 690 of 2026.

7. Ms. Anuja Gotad, learned APP for the Respondent-State, submits that the contraband recovered in the crime is of commercial quantity. She further submits that the charge in the crime has been framed and the matter is proceeding.

¹ (2004) 5 SCC 151

² Criminal Appeal No.690/2026 (@SLP (Crl.) No. 2052/2026)
Vivekanand

8. Perused the record, with the assistance of the learned Advocates.

9. Records reveal that the motorcycle from which the Charas was recovered is owned by Accused No. 1, as evident from the Registration Certificate on record (at page no. 82 of the paper book). The fact that the Applicant was a pillion rider on the motorcycle is undisputed. The question, therefore, is whether the Applicant can be held to be in conscious possession of the contraband recovered from the motorcycle of the Accused No. 1.

10. The Hon'ble Supreme Court in the case of Murlidhar Soni (supra) in paragraph 8 has observed as follows :-

8. We are in agreement with this finding of the High Court. It is to be noted that even though these accused persons were arrested on 24-9-1994, they were produced before the Court only on 27-9-1994 on which date both the accused submitted before the Court that they had suffered injuries at the hands of the investigating agency and it is under such physical threat their statements were recorded under Section 67 of the Act. The said Court had directed a medical examination of these accused on that day itself. The medical report and the evidence of DWs 1 and 2, the doctors who examined them, clearly shows that these accused had suffered injuries and Murlidhar Soni had actually suffered a fracture of the 10th left rib. The defence of the prosecution that these injuries might have been suffered by an accidental fall of the accused, cannot be accepted, thus, we are in agreement with the finding of the High Court that the statements of these accused persons have been obtained by the prosecuting agency under duress. It is also to be noted that even according to the prosecution case so far as this respondent

is concerned, his only role in regard to the contraband was to take his father on his scooter to the place where they were allegedly arrested. The bundle in question which contained the contraband was carried by Murlidhar Soni and there is no material whatsoever to show that the present respondent had the knowledge that the bundle contained any contraband. In our opinion since the prosecution has not placed any material to show the conscious possession of the contraband by the respondent herein and since Murlidhar Soni is dead, we think the contention advanced on behalf of the respondent as to the possession of the contraband by the respondent has to be accepted.

11. In the case of Ankit (supra), the Hon'ble Supreme Court in paragraph No. 7 has observed as follows :-

7. Having heard the learned counsels appearing for the parties and on perusal of the records, we notice that even according to the prosecution, the appellant is an employee working with A1. In other words, there seems to be master servant relationship between them. As to whether the appellant with a conscious mind had carried the contraband, is an issue which will have to be thrashed out during the course of trial. There being no criminal antecedents against the appellant and he being still young age of about 20 years and having regard to the length of incarceration from 10.06.2024, we are of the view that appellant should be enlarged on bail.

12. Ms. Anuja Gotad, learned APP for the Respondent-State, was unable to point to any material in the record indicating that the Applicant had knowledge of the plastic bag in the dicky of the motorcycle of the Accused No.1 or that the bag contained any contraband. Respondent has not placed any material to show the conscious possession of the Charas by the Applicant. It appears that, as nothing was found in possession of the Applicant, section

29 of the NDPS Act was applied. There is nothing on record to show that there is any conspiracy between the Applicant and Accused No.1. Based on the facts revealed in the charge sheet, I am satisfied, prima facie, that the Applicant is not guilty of such an offence and is entitled to bail.

13. Mr. Ayaz Khan, learned Advocate for the Applicant, states that the Applicant has no criminal antecedents. The Applicant is 30 years of age. He has been in jail for almost two years. In view of the above, custody of the Applicant would not be warranted pending the trial of Special Case No. 36 of 2024.

14. In view of the above, this Bail Application is allowed on the following terms :-

(a) The Applicant is directed to be released on bail in connection with C. R. No. 73 of 2024 registered with the Goregaon Police Station, Dist. Raigad, upon furnishing a PR bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with one or two local sureties in the like amount.

(b) The Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case to dissuade such person from disclosing the facts to the Court or any police officer, and shall not tamper with evidence.

(c) The Applicant shall, within three (3) days of his release from jail, provide to the Investigating Officer, Goregaon Police Station, Dist. Raigad, his residential address with proof, contact numbers, e-mail and must inform the Investigating Officer of any change in the same from time to time.

(d) The Applicant shall report to the Investigating Officer at Goregaon Police Station, Dist. Raigad, on the 2nd Saturday of every month, from 11.00 am to 12.00 noon, until the conclusion of the trial in Special NDPS No. 36 of 2024.

(e) The Applicant shall not leave the Country without the permission of the Trial Court.

(f) The Applicant shall deposit his passport, with

the Special Judge, Mangaon, Dist. Raigad (Special Court), in Special NDPS No. 36 of 2024, if he possesses one.

(g) The Applicant shall regularly appear before the Special Judge, Mangaon, Dist. Raigad (Special Court), in Special NDPS No. 36 of 2024, as and when the matter is fixed, unless specifically exempted.

(h) The Applicant shall not travel outside the State of Maharashtra without obtaining prior written permission from the Investigation Officer, Goregaon Police Station, Dist. Raigad.

(i) The Applicant shall not indulge in any similar offences punishable under the NDPS Act.

15. The observations made in the present order are meant for the purpose of deciding the Bail Application and would not have any impact or effect on the trial.

16. Bail Application No. 1918 of 2025 is disposed of.

(ASHWIN D. BHOBE, J.)