

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2325 OF 2025

Sandip Ramkishor Maurya ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Rounak Naik i/by Mr. Lochan Chandka, for the Applicant .
Mrs. Veera Shinde, APP, for the Respondent - State.

CORAM: R. M. JOSHI, J.

DATED: 30th APRIL, 2026

PC:-

1. The present applicant seeks regular bail in connection with C.R. No. II-215 of 2022 registered at Naupada Police Station for the offences punishable under Sections 8(c), 22(b), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “NDPS Act”).

2. In short, it is the case of the prosecution that the investigation originated from a secret tip-off received by the Anti-Narcotics Squad on 4th August, 2022, at approximately 8:15 pm. The intelligence suggested that a person would be arriving near the Teen Hath Naka Bridge in Thane for the purpose of distributing Mephedrone (MD). A raiding party consisting of police officers and independent panchas was constituted accordingly. At approximately 01:15 AM on 5th August, 2022, a passenger auto-rickshaw traveling from Mumbai towards Nashik was observed stopping near the designated location. The Applicant was seen

alighting from the vehicle, at which point the police team intercepted him. After the officers disclosed their identity, the Applicant was informed of the grounds for his apprehension. A personal search was conducted on-site, purportedly in adherence to the requirements of the NDPS Act. During this search, the police team recovered a plastic pouch from the Applicant containing a white powdery substance. The substance was weighed and found to be 81 grams. Based on field testing, the substance was initially identified and recorded as Mephedrone (MD) however, the Chemical Analyzer's report identifies the substance as Methamphetamine.

3. The Learned Counsel for the Applicant raised contention that the Applicant in the present case has been falsely implicated and that there were some procedural lapses. He further argued that there was non-compliance of sections 42, 50, 52A of the NDPS Act and that there was a delay in lodging of the FIR. It is further submitted that the samples of contraband are drawn at the spot and not before Magistrate and hence Applicant is entitled to get benefit therefrom. He further argued that the contraband recovered from the Applicant was not tested by following proper mandatory procedure under the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 wherein it provides that quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances however here in this case only 2 grams of samples were taken. He further contended that the information was about MD and the CA report has detected Methamphetamine

raising serious doubt on the story of the prosecution as per their claim that the Applicant had voluntarily informed that the said contraband was MD. The Learned Counsel for the Applicant relied on following judgments to support his contentions namely, ***UOI Vs. Mohanlal and Anr., (2016) 3 SCC 379, Mohanlal Vs. State of Punjab (2018) 17 SCC 627, Chandrabhan Janardan Yadav Vs. State of Maharashtra, 2025 SCC OnLine Bom 462.***

4. The Learned APP submitted that while the sample size required to conduct a test is 5 grams for MD, the test for 2 grams revealed that it is Methamphetamine essentially a contraband and that it is merely a procedural lapse. It was further submitted that sections 42 and 50 were duly complied by the police officers. As far as the compliance of Section 52A is concerned there is substantial compliance of the provisions thereunder. To support her contention relating to drawing of samples before the Magistrate she relied on the judgment of Hon'ble Supreme Court in the case of ***Jothi alias Nagajothi Vs. State Rep. by the Inspector of Police 2025 SCC OnLine SC 2774*** and to support her other contentions she relied on the following judgments namely, ***NCB Vs Kashif, AIROnline 2024 SC 911 and Bharat Aambale Vs. State of Chhattisgarh, AIROnline 2025 SC 43.***

5. There cannot be any dispute made with regard to the fact that Section 50 or the Act is mandatory in nature and it is obligation of the concerned Officer or empowered Officer to apprise the person who is to be searched of his right to get searched in presence of

Gazetted Officer or a Magistrate. *Prima facie* perusal of record shows that, there is sufficient compliance of the Section 50 of the Act. The Applicant was communicated in Hindi about the objective of the Search so also his right under Section 50 of the Act. The Applicant has written that he is not needed to be taken before the Gazetted Officer for the search and has duly signed the notice showing sufficient compliance of Section 50 of the Act. Here in this case apart from mention in the panchnama, there is evidence of such communication being made in writing to the Applicant. Applicant abjured his rights and chose to be searched by police officer empowered to conduct search. Thus, there is compliance of Section 50 of the Act.

6. As far as the compliance of Section 42 of the Act is concerned there is sufficient material on record to indicate that the immediate superiors were duly informed about the entire action taken by the Police Officers. This Court, therefore, finds no infraction with regard to the procedure contemplated by Section 42 of the Act.

7. In so far as the contention raised by the Applicant that the sample taken for the chemical test shall not be less than 5 grams as per the NDPS Rules is concerned, this court finds no substance in the contention since CA report is positive and it clearly indicate that the sample was sufficient to test and at this stage it cannot be held that the CA report is not valid. Moreover, at this stage it is not open for this court to decide that it is not a contraband.

8. On the point of non-compliance of Section 52A of the Act with regard to the drawing of samples before the Magistrate is concerned the contention of the learned APP has substance that this being a procedural irregularity cannot become a ground for grant of bail. The reference can be made to the judgment of the Hon'ble Supreme Court in ***Jothi alias Nagajothi Vs. State Rep. by the Inspector of Police 2025 SCC OnLine SC 2774*** wherein it observed thus:

“23. The appellant's primary submission is that the representative samples ought to have been drawn only before a Magistrate in terms of Section 52-A of the NDPS Act and that sampling at the spot itself renders the entire prosecution void. This contention is legally untenable. In Bharat Aambale v. State of Chhattisgarh, (2025) 8 SCC 452, this Court has comprehensively clarified the scope, purpose and effect of Section 52-A. Most significantly, paragraphs 56.5 and 56.6 of the said judgment make it clear that mere non-compliance or delayed compliance with Section 52-A is not fatal unless the irregularity creates discrepancies affecting the integrity of the seized substance or rendering the prosecution case doubtful. Equally, even where some procedural lapse is shown, if the remaining oral or documentary evidence inspires confidence regarding the seizure and conscious possession, the conviction may still be upheld.”

9. There is *prima facie* evidence on record to show that at the

spot samples were drawn in presence of Panchas and sealed samples were sent for chemical analysis. Thus, since the record indicates that there is sufficient compliance of the provisions relating to seizure, sampling and storage of the contraband it does not harm the case of prosecution and amounts to a mere procedural irregularity.

10. Having regard to the stringent provisions contained in Section 37 of the Act, it is well settled that bail can be granted only where there is *prima facie* material indicating non-compliance with mandatory provisions of the Act of such a nature as would vitiate the seizure itself. Mere irregularities or procedural lapses, capable of being explained by the prosecution during trial, would not suffice to satisfy the twin conditions prescribed under Section 37 of the Act.

11. In view of the above discussion, this court finds that it is not a fit case for grant of bail. Hence, following order :-

ORDER

Application stands dismissed.

(R. M. JOSHI, J.)

VDMokal/-