

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2668 OF 2025

Firoz Akbar Abdul Rahim Khan	...Applicant
Versus	
State Of Maharashtra	...Respondent

Mr. Taraq Sayed a/w Ashwinii Acharii and Aryan Kotwal, for the Applicant.

Mr. Swapnil Walve, APP for the Respondent-State.
HC – G.N. Pote, Kalyan Crime Branch, present.

CORAM: R. M. JOSHI, J.
DATED: 08th MAY, 2026.

PC:-

1. The Applicant seeks his release on bail in connection with CR No. 411 of 2024 dated 4th August, 2024, registered with the Bazarpeth Police Station, for offence punishable under Sections 8(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. It is the case of the prosecution that on 3rd August, 2024, a secret information was received that one person is going to be there at Bhail Bazar Chowk, Kalyan (W) for sale of contraband. The raiding party visited the spot. The Informant pointed out to the present Applicant to be the one who came to the spot for sale of the contraband. Thereafter, the Informant went away from the spot. Thereafter some police personnel went to the police

station and submitted the report of the same to the superior. Since there was no sufficient time to obtain written permissions, on the basis of oral permission raid was conducted. It is the case of the prosecution that on compliance of Section 50 of the NDPS Act, his search was taken, in which he was found in possession of 53 grams of Mephedrone. On conclusion of investigation, the charge-sheet has been filed.

3. Learned counsel for the Applicant submits that herein this case since the information was received in advance, it was mandatory for the concerned officer to reduce the same in writing and communicate it to the immediate superior. It is his submission that in absence thereof there is non-compliance of provisions of Section 42 of the NDPS Act. On the point of non-compliance of Section 50 of the NDPS Act, it is argued that the officer which took the search of the Applicant introduced himself to be a gazetted officer which is wholly impermissible in law. It is his submission that since there is non-compliance of Section 50 and 42 of the Act which are mandatory in nature, the recovery would be treated negated during the trial. He therefore seeks bail. The Applicant has no criminal antecedents and he is not likely to flee from justice.

4. Learned APP opposed the application by citing seriousness of the crime. It is his contention by referring to the panchanama of seizure of contraband that the contraband is of commercial quantity and hence rigors of Section 37 of the NDPS Act has application to the present case. He however was unable to show compliance of Section 42 from the charge-sheet.

5. Needless to say that there is an information in advance received by the concerned officer, it needs to be reduced in writing as contemplated under Section 41(1) of the Act. The same is required to be communicated thereafter to the immediate superior. The only exception is that in case, the information is received while on field, immediate reduction of the information in writing can be exempted, however, compliance of Section 42(2) of the Act would still be mandatory. *Prima facie* perusal of the record does not indicate the said compliance.

6. Insofar as compliance of Section 50 of the Act is concerned, it is right of the Applicant to being informed that he has right to seek his search in presence of nearest gazetted officer or a Magistrate. It is settled position of law by number of judgments indicating that the person who takes the search even if is a gazetted officer, cannot apprise himself to be a gazetted officer in order to create doubt in the mind of the Applicant with regard to his right to be taken search in presence of the nearest gazetted officer. In the instant case, the concerned officer who has taken the search has introduced himself to be a gazetted officer and as such this cannot be considered as proper and effective compliance of Section 50.

7. Once there is non-compliance of the mandatory provisions of Section 42 and 50 of the Act, this Court finds substance in the contention of learned counsel for the Applicant that the seizure of the contraband itself may be negated during the trial. The Applicant has no criminal history behind him and is not likely to flee from justice. This Court therefore finds reason to

believe that the Applicant may not have committed the crime in question and he is not likely to commit the crime if enlarged on bail.

ORDER

- i) The Bail Application stands allowed.
- ii) In connection with CR No. 411 of 2024 dated 4th August, 2024, registered with the Bazarpeth Police Station, the Applicant be enlarged on bail, on furnishing P. R. Bond in the sum of Rs.30,000/- with one surety in the like amount, to the satisfaction of the Trial Court.
- iii) The Applicant is directed to attend the concerned Police Station once in a month till conclusion of trial.
- iii) The Applicant is directed to attend all dates of hearing before the Trial Court, unless exempted by specific order.
- iv) Any breach of the aforestated condition shall result forthwith into cancellation of bail.

8. 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.)