

Navnath Waghmare (RA)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO. 3264 OF 2025**

Sudeshan Sadanandan Kurup ...Applicant  
***Versus***  
The Union Of India And Anr. ...Respondents

**Mr. Taraq Sayed, Anish Perira, Ashwinii Acharii and Aryan Kotwal**  
for the Applicant.

**Mr. Hitendra J. Dedia APP** for the Respondent-State.

**Ms.Kshitija Wadakar a/w Khushi Patharia** for Respondent No.1

**Mr. Vicky, PSI, I.O. NCB, MZU.**

CORAM: R. M. JOSHI, J.

RESERVED ON 02<sup>nd</sup> APRIL, 2026  
PRONOUNCED ON 08<sup>th</sup> APRIL, 2026

**PC:-**

1. Applicant seeks bail in connection with CR No. 17 of 2024 registered with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai for the offence punishable under Section 8(c), r/w 22(c), 28 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 specific information was received in respect of one person Shahnawaz Mohammad Shahijada Shaikh carrying 5Kgs. (MD) in a travel

bus from Hyderabad to Mumbai. On the basis of said information, after compliance of Provisions of Section 42 of the Act, a trap was laid for Shahnawaz. He was apprehended. After compliance of provisions of Section 50 of the Act, he was searched and he was found carrying contraband of about 5 Kgs. He came to be arrested and his statement was recorded under Section 67 of the Act. After interrogating him, involvement of the present applicant was revealed. The statement of witness-Rekha was recorded confirming the fact that mobile phones seized from the present applicant though were not in his name, but he was using the same. There is further evidence collected in form of emails exchanged between applicant and accused no.3 and Whats-App Calls, CDRs etc. It was also revealed during the investigation that previously similar crime was registered against the applicant of trafficking of contraband Cocaine. After completion of the investigation, chargesheet came to be filed.

3. Learned counsel for the applicant submits that though alleged information was received in respect of Mephedrone

being carried out by accused no.1, in fact, some other contraband was seized at his instance. In this regard, reference is made to the C.A. Report which indicates that the allegedly seized contraband was found from the accused no.1 is Clephedrone. It is his submission that thus doubt is created with regard to information received, so also subsequent recovery at the instance of the co-accused. It is his further submitted that in so far as the present applicant is concerned, except for the alleged statement of co-accused, there is absolutely no evidence that connects him with the crime. In this regard he argued that statement of the accused under Section 67 is not admissible evidence and the same cannot be relied upon during trial nor even at this stage. He further argued that on alleged recovery mobile phones from the applicant they were not sealed. Hence, any data/information retrieved from the said mobile phone cannot become admissible in evidence. It is his further submission that there is a previous case registered against the applicant, however, he is enlarged on bail therein essentially on these grounds

applicant seeks bail. Learned Counsel for the applicant further submits that co-accused no.3 who was said to be in contact with the applicant is enlarged on Anticipatory Bail by this Court order dated 07.01.2026 passed in Bail application No. 3598 of 2024 and which shows that emails exchanged between them is not incriminating evidence.

4. In support of these submissions, he placed reliance of the following judgment/Orders:

- 1) *Armaan Kohli Vs. Union of India, Criminal Bail Application No. 1248 of 2022.*;
- 2) *Kuruvilla Omen Cherian Vs. State of Maharashtra, Criminal Bail application No. 4775 of 2024*;
- 3) *Ranjan Shaam Mawar Vs. State of Maharashtra, Criminal Bail Application No. 3880 of 2021*;
- 4) *Union of India Vs. Vigin K. Varghese, 2025 SCC OnLine SC 2440.*

5. Learned APP, opposed the application that in this case apart from data/information in the mobile phone, there is statement of witness-Rekha which connects applicant in the crime in question. It is further argued that since the applicant has committed the present offence while on bail in connection

with similar offence registered against him earlier, it cannot be said that the applicant is not likely to commit crime if he is enlarged on bail. According to him, embargo of Section 37 would apply to the instant case.

6. Prima-facie, perusal of the record indicates that pursuant to the specific information received, trap was laid in which accused no.1 was apprehended and from his possession contraband of about 5 Kgs. was seized. C.A. report indicates that the said seized contraband is Clephedrone. Merely because information received with regard to the Mephedrone and it turns out to be different contraband, it cannot be said that any benefit thereof can be extended to the accused persons at this stage. Thus, this is a case of seizure of commercial quantity of contraband from the co-accused. For application of Section 37 of the Act, actual seizure /recovery of contraband from any particular accused is not necessary. This Court has to see whether the contraband seized in a particular case is of commercial quantity and present applicant could be connected there to in order to apply

provisions of Section 37 of the Act and in facts of the case, it has application.

7. Prosecution relies upon the panchnama indicating seizure of mobile phones from the present applicant. The said panchnama indicates that on seizure of mobile phones, they were sealed. Apart from this there is statement of witness-Rekha, who specifically states about these being used by the applicant. Thus, there is evidence to show the incriminating recovery from the applicant. Moreover, the seizure of mobile phones and sealing thereof immediately rules out possibly of tampering with the same.

8. It is pertinent to note that apart from the aforestated evidence, there is evidence in the form of email exchanged between applicant and co-accused no.3. Though, it is sought to be argued that the CDR's by themselves will not become a ground for connecting applicant with the crime and in this regard reference is made to the orders/judgments cited supra, there is the material different in the facts of those cases and the present case. In those cases except statement of co-

accused or applicant under Section 67 of the Act, which is in admissible in trial, there was no other evidence to connect accused/applicant therein with crime. Record indicates that there is other evidence to connect applicant with crime in the form of statement of witness and other material. In the present case, only evidence which makes present case materially different than the cases cited supra.

9. Apart from this, what is more relevant is that the present crime has been committed by the applicant, while he was on bail in connection with the offence registered against him under the NDPS Act. It seems that in the earlier case only for the reason that the contraband was of intermediate quantity, bail came to be granted to the applicant. In light of these facts this Court has no reason to believe that the applicant would not commit any similar offence in case he is enlarged on bail.

10. At this stage, it would be relevant to take note of Section 37 of the Act, which requires twin conditions to be satisfied with in order to grant bail to the accused in the case

of seizure of contraband of commercial quantity. Here in this case indisputably the contraband seized at the instance of accused no.1 is of commercial quantity. In order to enable the court to grant bail in such offence the Court must have a reason to believe that the accused is not guilty of the offence charged and would not commit similar offence, if he is enlarged on bail. Apart from the fact, that there is *prima-facie* material on record on the basis of which the Court cannot record such belief of applicant being not guilty of charged. Secondly it also cannot be said that he would not commit similar offence, if he is released on bail, Since, while on bail in similar offence, present crime is committed. Both conditions are essential before grant of bail and in absence of applicability of even any one of them, Court cannot exercise its power of granting bail. Hence, applicant has failed to make out any case for grant of bail.

**11.** Application, therefore, stands dismissed.

(R. M. JOSHI, J.)