

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3293 OF 2025

Tochukawu tobias umeh ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Ashwinii Acharii, a/w Taraq Sayed, Anish Pereria, Aryan
Kotwal for the Applicant

Mrs. Veera Shinde, APP for the Respondent-State.

CORAM: R. M. JOSHI, J.

DATED: 22nd APRIL, 2026

PC:-

1. The applicant seeks bail in connection with C.R. No. 72 of 2021 registered with ANC Azad Maidan Unit, Mumbai for the offences punishable under Sections 8(c), r/w 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. In short, it is a case of the prosecution that on 11.08.2021, three foreign nationals were intercepted and from them commercial quantity of contraband (MD) was seized. The applicant came to be arrested on the same day

and charge has been framed against him on 22.10.2024.

3. Learned counsel for the applicant, submits that co-accused against whom similar allegations are attributed are already enlarged on bail by this Court. It is contended that the applicant is in jail without trial over a period of four years and inspite of the fact that charge has been framed against him on 22.10.2024 to till date not a single witness has been examined by the prosecution. On merit, it is contended that in this case the sample are not drawn before the Magistrate and as such there is non-compliance of Section 52A of the Act. To support his submissions he placed reliance on judgment of Hon'ble Supreme Court in case of ***Union of India Vs. Mohanlal and Anr.***, in Criminal Appeal No. 652 of 2012, she referred the observations made by the Supreme Court in paragraph no. 13 and 14 and directions issued there in para 20 of the judgment.

4. Learned APP opposes the application by citing seriousness of the crime. It is her contention that Section 52A is not mandatory and its non-compliance may not result into

negating the recovery. According to her it can be explained during the trial. She further argued that the recovery has been affected on 11.08.2021 and the same is prior to the notification issued by the Central Government with regard to the drawing of samples in presence of Magistrate.

5. There is no dispute about fact that the co-accused are enlarged on bail. The order 12.12.2024 passed in Bail Application No.4273 of 2023 indicates that on account of non-compliance of requirements of the Section 52A of the NDPS Act, i.e. non drawing of samples before the Magistrate, the co-accused was granted bail by this Court. This order has not been taken exception to.

6. With regard to the contention of learned counsel for the applicant that samples are not drawn in presence of the Magistrate, prosecution does not dispute the said fact. However, it is claimed that since the seizure has been done prior to the issuance of notification by the Central Government non drawing of samples before the Magistrate may not become a ground for grant of bail

to the applicant.

7. In this regard, it would be material to take note of the order dated 18.01.2026 passed by the Hon'ble Supreme Court in ***Mohanlal*** (supra) wherein in paragraph 20 of the said judgment following directions are issued.

"20. To sum up we direct as under:-

- i. *No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer- in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.*
- ii. *The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities and the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyance duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.*

- iii. *The Central government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.*
- iv. *Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'.*

8. It is thus, clear that the Hon'ble Supreme Court had issued directions about the compliance of taking samples in presence of Magistrate from the date of the said order. Since there is non-compliance of the said directions, this is a fit case to grant bail. In any case co-accused with similar allegations are enlarged on bail and hence on parity applicant deserves bail.

9. It is also necessary to take note of the fact that applicant is arrested on 11.08.2021 and inspite of framing of charge on 22.10.2024 till date not a single witness has been examined by the prosecution. Thus, this Court has no reason to believe that trial would get over in reasonable time.

10. Having regard to the aforestated discussion, more particularly, in view of non-drawing of samples before the

Magistrate, this Court has no reason to believe that applicant has committed a crime in question. He has no criminal history and therefore, it cannot be said that if released on bail he would commit similar crime.

11. Hence, the following order:-

ORDER

- i. The applicant shall be released on bail in connection with C.R. No. 72 of 2021 registered with ANC Azad Maidan Unit, Mumbai, on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- ii. The applicant shall attend the office of the Anti Narcotics Cell, Azad Maidan, Mumbai, on first Monday of every month between 10:00 a.m. to 12:00 noon, during the pendency of the trial.
- iii. Upon release, within one week, the applicant shall inform the Investigating Officer as well as the Trial Court about his contact number and

residential address and update the same in case of any change;

iv. The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

v. The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.

12. Needless to say, violation of any of the aforesaid conditions may lead to cancellation of the present order.

13. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application stands disposed of.

R. M. JOSHI, J.