

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3297 OF 2025

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IMRAN AHMED MOHAMMED

V/s.

...Applicant

THE UNION OF INDIA AND OTHERS

...Respondents

Mr.Advait Tamhankar i/b Mr.Kamlesh Satre for the Applicant.

Ms.Ruju R. Thakker with Mr.P:riyanshu Doshi for the Res -UOI.

Ms.S.D. Shinde, APP for the Respondent – State.

CORAM	: R. M. JOSHI, J
RESERVED ON	: 26TH MARCH, 2026
PRONOUNCED ON	: 6TH APRIL, 2026

PC:

1. Applicant has filed this application under Section 483 of BNSS seeking bail in connection with Crime No.49/2023, registered with DRI Regional Unit, Mumbai, for offences punishable under Sections 8(c) r/w 23(c), 21(c), 27A, 28, 29, 30, 35 & 54 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. In short, it is the case of the prosecution that on 03.04.2023, information was received that one person named Imran Mohd. is scheduled to arrive Mumbai at 2.30 am on 04.04.2023 and that he might be carrying Narcotic and Psychotropic Substance. Pursuant to the said information, the

Intelligence Team reached Mumbai Airport on 04.04.2023 in the morning along with two panch witnesses. The officer intercepted a passenger and from checking his passport it was confirmed that his name is Imran Mohd. i.e. present applicant. He was carrying one trolley bag and one brown colour sling bag. On questioning by the officer to the applicant with regard to carrying any Narcotic Substance, he denied of having the same with him. The applicant was also informed about his right to be examined before a Magistrate or a Gazetted Officer. Applicant chose to be examined before a Gazetted Officer. A notice under Section 50 of the Act was served on him. During the personal search of the applicant, nothing incriminating was recovered. However, when trolley bag was examined, a packet was found therein containing white powdery substance. The weight of the said substance along with the packet was found to be 2060 gms. The net weight of the white powdery substance was found to be 1970 gms. The officers then took a pinch of the powder from the said packet and tested the same with field testing kit. It was found that the said powder was Cocaine. Applicant was summoned to appear before the Investigating Officer and his statement was recorded on 04.04.2023. He was arrested at 16.30 hours on 04.04.2023.

3. On the basis of information received from the applicant during his interrogation, one team reached Hotel RK residency in Ville Parle as it

was informed that the said packet was to be delivered to accused No. 3. As per the description given by the applicant, one person was apprehended at the said hotel. From the statement of the said person i.e. accused No. 3, it was revealed that the present applicant brought the Narcotic Substance from foreign country and the co-accused i.e. accused No. 3 was to receive the said packet. His statement further revealed previous similar transaction entered into by him with one Morris. On conclusion of investigation, charge-sheet came to be filed against the accused persons including the present applicant. Bail application filed by the applicant before the Special Court came to be rejected. Hence this application.

4. Learned Counsel for the applicant makes a categorical statement that the applicant is not seeking bail on any other ground or on the merit of the case but the bail is sought solely on the ground that the applicant was not produced before the concerned Magistrate within 24 hours of his detainment/arrest. To support this submission, he drew attention of the Court to certain facts which, according to him, appear from the panchanama and material in the charge-sheet. It is his submission that admittedly, the applicant was produced before the Magistrate on 05.04.2023 at 4.00 pm and hence he was not produced before the Magistrate within 24 hours of his detainment.

5. It is his submission that the contention of prosecution with

regard to the arrest of the applicant being done at 16.30 hours i.e. 4.30 pm on 04.04.2023 is not acceptable. He submits that as per record, on 04.04.2023, at 2.30 am, the applicant was detained by the officer which is revealed from the panchanama of seizure. According to him, at the most, arrest could be said at 5.45 am on 04.04.2023 as the panchanama of seizure was concluded at that point of time. At the outset, in order to argue as to what custody means, he placed reliance on judgment of the Hon'ble Supreme Court in case of Niranjana Singh vs. Prabhakar Rajaram Kharote, 1980(2) SCC 559. He referred to paragraph No. 7 of the said judgment in order to contend that the applicant is said to have been arrested the time at which he was detained. He then referred to the judgment of the Division Bench of this Court in Writ Petition No. 54/2025 in case of Hanumanth Jagannath Nazirkar vs. State of Maharashtra. It is pointed out from Paragraph No. 21 of the judgment that this Court in case of Ashraf Hussain has considered the said issue and made observations therein in Paragraph Nos. 9 to 12. He also relied upon another judgment of Division Bench of this Court in case of Hemang Jadhavji Shah vs. State of Maharashtra reported in 2025 SCC Online Bom 2145. Apart from this, order dated 02.12.2024 passed in Bail Application No. 2835/2023 by Coordinate Bench of this Court is also relied upon. It is contended that this order has been passed under the provisions of NDPS Act and taking into consideration the fact that the accused was not produced before the concerned Magistrate

within 24 hours of his detention, he was granted bail. Apart from above submissions, he further submitted that a doubt is created with regard to the complicity of the applicant in this crime as the File No. i.e Case No. appears on the summons under Section 67 though the offence came to be registered at latter point of time. He also placed reliance on following judgments/order :-

1. Syed Sameer Hussain Vs. State of Maharashtra and Anr., in Bail Application No. 5391 of 2024
2. Hussainbi Faqeer Sahikh Vs. Union of India & Anr. in Bail Application No. 2835 of 2023
3. Sabnam Suleman Ansari Vs. The State of Maharashtra in Criminal Bail Application No. 1198 of 2025
4. Directorate of Enforcement Vs. Subhash Sharma, 2025 SCC OnLine SC 240.

6. Learned APP opposed the application by pointing out provisions of Section 37 of the Act which creates embargo for grant of bail unless the Court finds that the applicant has not committed the offence alleged against him or/and that he would not likely to commit the same if enlarged on bail. It is further argued that the applicant was produced before the Magistrate wherein he was duly represented by a lawyer of his choice and in spite of the same, he never made any grievance in respect of non-production within 24 hours. It is further argued that the fact that applicant received summons indicates that he was not detained and it is only after his arrest at 4.30 pm, on 04.04.2023, he can be said to have been arrested and hence within 24

hours thereafter he was produced before the Magistrate. In respect of judgments cited by learned Counsel for the applicant, it is sought to be argued that those judgments are not pertaining to the provisions of NDPS Act. On these amongst other contentions, learned APP has sought dismissal of the application.

7. Before appreciating rival contentions and recording findings thereon, this Court finds it appropriate to refer certain undisputed facts which read thus :-

The applicant arrived at Chhatrapati Shivaji Maharaj International Air-Port by Ethiopian Airline Flight No. ET 640 at 2.30 am on 04.04.2023. He was intercepted by the officers and after due compliance of the provisions of Section 50 of the Act, his personal search was taken. Nothing was found during his personal search. During the search of his baggage, however, contraband i.e. Cocaine weighing 1906 gms. was found with him. Said seizure panchanama was concluded at 5.45 am on 04.04.2023. Under Section 57 of NDPS Act a report of seizure was submitted to the higher authorities contemplated by Section 53 of the Act. Applicant was directed to appear before the Intelligence Officer, DRI, MZU, at 10.30 am on 04.04.2023. His statement came to be recorded under Section 67 of the Act. At 4.30 pm on 04.04.2023 memo of arrest was prepared. It needs to be recorded that pursuant to the statement i.e. the one given by the

applicant, co-accused i.e. accused No. 3 came to be apprehended. On 05.04.2023, at 4.00 pm, the applicant was produced before the Additional Chief Metropolitan Magistrate, 47th Court, Mumbai.

8. Insofar as objection with regard to the mentioning of Case No. on the summons is concerned, it is not necessary that such appearance of the Case No. on the summons is unexplainable. What is required to be considered is as to whether there is any evidence against the applicant showing his complicity in the crime. If his complicity is found in the crime and if this Court has no reason to believe that the applicant has not committed the crime and that he is not likely to commit crime, if enlarged on bail, he would not be entitled to seek bail.

9. Though in the application various other grounds are raised by the Applicant for seeking bail, however, during the course of argument except for the ground that Applicant was not produced before the nearest Magistrate within 24 hours of his arrest, no other grounds are pressed. There is no dispute about the fact that pursuant to the intelligence received by DRI, the Applicant was intercepted at the Airport and the panchnama of his arrest and seizure commenced at 02.30 am on 04.04.2024 and it concluded at 05.45 am. Under the said panchnama, contraband came to be seized from the Applicant. Further, admittedly, notice was issued on 04.04.2024 to the Applicant under Section 67 of the Act for recording of his

statement. Accordingly, statement of the Applicant came to be recorded wherein it is disclosed that the contraband article was to be handed over to the co-accused, who was waiting for him in hotel. After recording of this statement, hotel as disclosed by the Applicant was raided and from there co-accused came to be accosted. From his statement, it was revealed that the narcotic substance was transported by them in collusion. He was aware of the tickets of Applicant being arranged by Maurice and that he was to collect contraband from applicant. A memo of arrest was prepared at 04.30 hours. Applicant was produced before the Magistrate on 05.04.2024 at 04.00 pm.

10. Learned Counsel for the Applicant by relying upon the judgment of the Hon'ble Supreme Court in case of Niranjana Singh (supra) submits that the memo of arrest prepared by the investigating agency cannot be construed as time of arrest and the time on which at first instance the person was detained and his liberty was curtailed should be considered as arrest and from that time within 24 hours such person is required to be produced before the Magistrate. He relied upon the judgments and orders passed by various Courts including Coordinate Benches of this Court on similar lines.

11. This Court has no reason to not to follow the judgments of the Hon'ble Supreme Court including judgment in case of Niranjana Singh

(supra). A question would arise before this Court is as to whether the judgments passed under the Acts other than NDPS Act would be applied without considering the facts and circumstances of the case and the special provisions made in Special Act. From the bare perusal of the NDPS Act it can be seen that the legislature has consciously deviated from the general principles governing search, seizure and arrest in cases of an offender under the NDPS Act and also grant of bail.

12. Needless to say that legislative intent is required to be ascertained and given due consideration so also words used by the legislature in a particular statute has to be given its intended meaning. It need not be emphasized that the object and purpose of the Act is to curb drug abuse and trafficking of the narcotic and psychotropic substance. While considering the provisions of the Act, it cannot be ignored the nature of offences involved in such cases. Ordinarily, in all other offences, the offence gets over at the time of or before commencement of investigation. On the contrary, in some cases involved under the Act even on apprehension of a person with possession of contraband, the offence is not complete as the contraband often is brought for the purpose of handing over to another person. In such case it becomes the imperative for the officer to take urgent steps for the purpose of grabbing of such person arrived for collecting contraband from the accused. To provide ground for further action,

statement of approached person may be required to be recorded under Section 67 of the Act. All these issues cannot be ignored while deciding application for bail.

13. The provisions of the act clearly indicates the deviation being made from the general rules and more particularly, provisions of CrPC, which can be reflected from the provisions of Section 51, which makes application of CrPC in respect of warrants, arrest, searches and seizures in so far as they are not inconsistent with the provisions of this Act. The simple meaning thereof is that if any provision is found under CrPC/BNSS inconsistent to the provision of NDPS Act, latter act will prevail over the earlier. At this stage, it would be necessary to take note of Section 52 of the Act, which reads thus:

Section 52 - Disposal of persons arrested and articles seized

(1) Any officer arresting a person under section 41, section 42 section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to--

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

14. Perusal of the said provision indicates that it permits the officer arresting any person to produce him/her before the Magistrate only in case arrest is done on the basis of warrant is issued by such Magistrate. Even in that case, the production is necessary before the same Magistrate who has issued the warrant. Needless to say that even in that case it would not be open for the arresting officer to produce arrested person even to a nearest Magistrate. This is a clear deviation from the provision of CrPC.

15. Sub-section (3) shows that every person arrested without warrant from a Magistrate is required to be forwarded to the officer in-charge of nearest police station or the officer empowered under Section 53. This indicates that when an arrest is caused without warrant of the Magistrate, the person arresting the arrestee cannot produce him before Magistrate but he shall have to be forwarded to officer in-charge of nearest police station or officer empowered without unnecessary delay. Use of specific word by the legislature cannot be ignored by the Court. What is contemplated by sub-section (3) is that on arrest of any such person, without unnecessary delay he needs to be forwarded to the authorities

under clauses (a) and (b). Needless to say that it would be a matter of fact and circumstances of each case that would determine whether delay is unnecessary or not.

16. It is relevant to note that in a given case, after conclusion of panchnama, it was revealed that Applicant was to handover the contraband to co-accused at a particular place, in absence of recording of statement of the Applicant under Section 67 of the Act, there could be no any basis for the officer to take further steps in that regard. Thus, it becomes imperative for him to issue notice to the Applicant for recording his statement under Section 67 of the Act and pursuant to the said recording, co-accused eg. person who is waiting to receive consignment could be accosted. Thus, in such case it cannot be said that the Applicant was not produced before the empowered officer under Section 53 with unnecessary delay. In any case, no such case of unnecessary delay is sought to be made out by the Applicant. Once it is held that the provisions of the CrPC, which are inconsistent to the present Act, the provisions of the Act would prevail over them. It cannot be said that the person who carried out search has failed to produce the Applicant before Magistrate within a period of 24 hours.

17. Sub-section (4) of Section 52 indicates that the Authority or officer to whom any person is forwarded shall take such measures as may be necessary for the disposal according to law of such person and at this stage

the provisions of CrPC could be made applicable to the case under NDPS Act.

18. It would not be out of context to mention that in different special statutes different provisions are made in this regard for e.g. PMLA [sec 19(3)] provides for production of arrested accused within 24 hours, before Magistrate having jurisdiction, without required to be forwarded to the in-charge of police station. UAP Act however in section 43(c) requires without unnecessary delay arrestee to be forwarded to in-charge of nearest police station and there such authority is required to take further steps as per law. This provision is also conspicuously absent in respect of offences under the NDPS Act. Such conspicuous absence cannot be ignored or brushed aside lightly. Needless to say that intention of legislature needs to be considered in the light of aims and objects of enactment of such provision.

19. This Court, therefore, finds that the period of 24 hours for production of the Applicant before the Magistrate would commence from the time the Applicant is produced before the Authority under clauses (a) and (b) of sub-section (3) of Section 52. It is however to be clarified that it does not mean that person searched could be kept in custody at the whims of authority. Needless to say that it would be open for the accused to claim that the delay, if any, caused in his production before such authority was unnecessary and in that case, Courts would be required to take into

consideration such grievance and the deal with the same.

20. Reverting to the facts of the case, when a question would come in terms of minutes or for that sake even in hours for non production of the accused before the Court after his arrest, in considered view of this Court, such issue would involve question of fact since the time travel from the place of arrest to the Magistrate deserves to be excluded from computation of said time. The time for travel cannot be equated with the distance between two places. Time for travel, therefore, may be different in different situation/circumstances and would become explainable. For this reason, such issue needs to be raised at the first instance i.e. before Magistrate who would be in a position to seek justification for time of travel from the officer. If it is not raised, it may not be open for the Court at later stage, more particularly, while dealing bail application to decide issue about the non production of the accused within 24 hours as the same would involve question of facts, if the dispute is with regard to the time in hours and it becomes explainable.

21. This Court does not even remotely suggest that accused's right to be produced before the Magistrate could be dilated in any manner. The endeavor of this Court is to deal with the point that issue raised before the bail Court becomes explainable and when such issue should have been raised before the Magistrate at the first instance, since said Court would be

in a position to render findings on fact seeking justification for time required for travel, there could be no justification even for this Court to decide the same. In the case of offences involving commercial quantity of narcotic drug/substance, in view of embargo created by Section 37 of the Act, the Court would not get power to enlarge applicant on bail unless twin conditions are satisfied for grant of bail. With utmost respect at command of this Court, the judgment of Hon'ble Supreme Court in case of Director of Enforcement vs. Subhash Sharma (supra) has been passed in case of an offence under PML Act, which makes specific provision in Section 19(3) of the said Act, with regard to production of accused before the Magistrate within 24 hours.

22. Having regard to the special provisions made under NDPS Act and conscious exclusion of provision of production by officer who takes search and effects seizure, before the Magistrate, coupled with the embargo created by Section 37 of the Act in grant of bail, applicant is not entitled to bail since this Court is neither of reasonable belief that applicant is not guilty nor that he won't commit crime if enlarged on bail.

23. As a result of above discussion, application deserves to be rejected. Hence, it stands dismissed.

(R. M. JOSHI, J.)