

Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4031 OF 2025

Faijan @ Faizan Abdul Aziz Shaikh	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Kamlesh Mahadev Satre, for the Applicant.
Mr. A.S.Gawai, APP for the Respondent-State.

CORAM: R. M. JOSHI, J.
DATED: 10th APRIL, 2026.

PC:-

1. This Application is filed for bail in connection with Crime No.0547 of 2024 registered with Trombay Police Station, Brihanmumbai City, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. In short, it is the case of the prosecution that on 23rd November 2024, while patrolling duty was done, the officers came across the present Applicant. He was found in a suspicious condition and, hence, after compliance of the provisions of the NDPS Act, his search was taken. During the search, there is recovery of 20 bottles of Codeine Phosphate and Triprolidine HCL Syrup, namely Andrex Cough Syrup, from him. The said muddemal was placed before the Magistrate under Section 52A of

the NDPS Act, and samples were sent to the Chemical Analyst for examination. On conclusion of the investigation, a charge-sheet is filed.

3. Learned counsel for the Applicant, at the outset, submits that the arrest of the Applicant is illegal as he has not been communicated the grounds of arrest in the language known to him. To support his submission that in such circumstances, he is entitled to bail, reference is made to the order of the Hon'ble Supreme Court in the case of *Dr. Rajinder Rajan v. Union of India & Anr.*¹. It is his further submission that there is a difference in the timings recorded in the panchanamas in respect of search and seizure of the Applicant as compared to the timings appearing in the videography done thereof. It is his further submission that muddemal number cannot appear on the label and the photographs on record indicate so, which according to him, creates a doubt about the seizure of the contraband. He places reliance on the order of this Court dated 4th October 2024 passed in Bail Application No. 536 of 2024. Finally, he submits that C.A. Reports are not received. He however, insists for an order to be passed irrespective of the fact that the C.A. Report is not received.

4. The learned APP opposes the Application by pointing out that herein in this case, there is due compliance of provisions of Section 50 of the NDPS Act and for infraction, if any, in respect of compliance of Section 52A of the NDPS Act, in view of the judgment of the Hon'ble Apex Court in the case of *Narcotics*

1 Criminal Appeal No(s). of 2026 arising out of SLP (Crl.) No(s). 3326 of 2026 and SLP (Crl.) No(s). 3327 of 2026 decided on April 01, 2026.

*Control Bureau v. Kashif*², the same become explainable during the trial and as such, it cannot be a ground for grant of bail.

5. Insofar as the first ground sought to be contended by the learned counsel for the Applicant with regard to his arrest being illegal for not providing grounds of arrest, a perusal of the record indicates that grounds of arrest were duly furnished to him in writing. It is further relevant to note that at no point of time till amendment being caused to the present Application, ever the Applicant raised any dispute with regard to knowledge of the grounds of arrest. It is for the first time in this proceeding, such plea is sought to be raised. Once, the grounds of arrest are duly furnished, the burden is upon the Applicant to convey to the Magistrate on remand or even at the time of making Bail Application before the Special Court that the grounds of arrest communicated to him, were not in the language known to him and hence, he did not understand the same. Herein in this case, even at the time of filing the Application, no such plea was raised. It is by way of amendment, such plea is sought to be raised. Merely because there is mention in the records about the language known to the Applicant to be Hindi, there is no presumption that he does not understand any other language, more particularly, the language of the State in which there is communication of the grounds of arrest. In absence of any such plea being raised, this Court is of the view that there is no substance in the said contention. As such, arrest of the Applicant cannot held to be illegal. Consequently, he is not entitled for bail on that ground.

2(2024) 11 SCC 372

6. As far as the other mandatory compliances under the NDPS Act are concerned, apparently, provisions of Section 50 of the NDPS Act are duly complied with. Thus, it cannot be said that the seizure of the contraband would be negated by any other infraction in compliance with the procedure.

7. The Hon'ble Supreme Court in the case of *Kashif (Supra)* has dealt with the issue of non-compliance of Section 52A of the NDPS Act and has held as under::

“39. (i)

(ii)

(iii)

(iv)

(v) *Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.”*

8. As far as the difference in the timings in the videography and the actual panchanama is concerned, the said difference is in minutes. Needless to say, that this could be explained by the Prosecution in view of the known fact that what reflects in the videography is the time as per the settings in the instrument by which the videography is done. Similar is the case with the appearance of muddemal number, which could be a matter of

explanation during the trial. These discrepancies do not go to the root of the case and in any case would not make the recovery of contraband illegal.

9. Section 37 of the NDPS Act is brought to the statute book in order to carve out exception to the general principle that '*bail is the rule and jail is the exception*'. Unless, there is non-compliance of mandatory provisions of the NDPS Act, which would lead to negating the seizure itself, the question of grant of bail does not arise. Herein in this case, this Court has no reason to believe that the Applicant has not committed the offence and that he is not likely to commit the same, if he is enlarged on bail.

10. As a result of above discussion, the Application stands dismissed and disposed of.

(R. M. JOSHI, J.)

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