

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.4169 OF 2025

Samir Ahmad Amir Ahmad Shaikh @ Ladadha ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Kamlesh Satre i/by Ajay Sahani, for the Applicant.

Mr. Mayur S. Sonavane, APP for the Respondent - State.

PSI – Avinash Darade, D.N. Nagar Police Station, Mumbai, present.

CORAM: R. M. JOSHI, J.

DATED: 1st APRIL, 2026.

PC:-

1. The Applicant seeks his enlargement on bail in connection with CR No. 245 of 2025, registered with D.N. Nagar Police Station, for offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. It is the case of the prosecution that on 14th February, 2025, the Applicant was accosted and from his custody 52 grams of Mephedrone was seized. After following the due procedure prescribed under the NDPS Act, the charge-sheet came to be filed against the Applicant.

3. Learned counsel for the Applicant submits that there is *prima facie* doubt with regard to the seized contraband being of commercial quantity in order to apply rigors of Section 37 of the

NDPS Act. In this regard, he drew attention of the Court to Panchanama recorded at the time of seizure of the contraband so also the Inventory Panchanama. It is his submission that admittedly the weight of the contraband includes the weight of the pouch in which it was kept. It is his submission that in such event, the burden upon the prosecution to show that excluding the weight of the pouch, the contraband is of commercial quantity. In absence of any such evidence it cannot be held so. He therefore seeks bail on the ground that Applicant had no criminal antecedents and the trial is not likely to get over within a reasonable time.

4. Learned APP opposed the application by contending that 52 grams of Mephedrone is of commercial quantity and as such the embargo of Section 37 of the Act would apply to the present case. He tried to convince this Court with a submission that the weight of the plastic pouch cannot exceed one gram and therefore it be held that the quantity of contraband seized at the instance of the Applicant is a commercial quantity. He submits that the co-accused is absconding and hence it would be necessary that the Applicant is directed to appear before the Investigating Officer once in a month till framing of the charges.

5. Even under the Provisions of the NDPS Act, the burden solely lies upon the prosecution to prove charge against the Applicant. Once the prosecution claims that the seized contraband is commercial quantity and that the provisions of Section 37 would apply to the case, the burden would be upon the prosecution to substantiate the same. Herein this case there is a difference of two grams in order to decide as to whether this is a commercial

quantity or non commercial quantity. Needless to say that only in case there is *prima facie* evidence to show that the seized contraband is of commercial quantity, the rigors of Section 37 would apply.

6. Apart from the fact that no weight of the plastic pouch is taken by the prosecution, pertinently there is no even mention about the nature of the plastic pouch indicating thickness of the plastic in order to accept the contention of learned APP. Needless to say that the plastic pouch can be of different weight depending upon the material used.

7. In such circumstances, in absence of any such evidence to indicate the weight of the pouch, it would be hazardous to accept the case of the prosecution at this stage that the quantity which was seized at the instance of the Applicant is a commercial quantity of contraband. Once it is held so, question of applying rigors of Section 37 does not arise.

8. The Applicant has no criminal history. After filing of the charge-sheet his custody is not necessary. He is not likely to flee from justice. Hence, application stands allowed.

ORDER

i) The Bail Application stands allowed.

ii) In connection with CR No. 245 of 2025 registered with D.N. Nagar Police Station, the Applicant be released on bail on furnishing PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court.

iii) The Applicant shall attend all dates of hearing before the Trial Court, unless exempted.

iv) The Applicant shall appear before the Investigating Officer on First day of each month between 11:00 a.m. and 01:00 p.m. till framing of charges.

9. 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.)