

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 4474 OF 2025

Nazim Ali Ashfaq Ali @ Nazimali Ashfaqali ...Applicant
Sayyed

Versus

State Of Maharashtra ...Respondent

Mr. Gopal J. Pandey i/b Rahul Pandey for the Applicant.

Ms. Veera Shinde APP for the State

CORAM:

R. M. JOSHI, J.

JUDGMENT:- **RESERVED ON :** **16th MARCH, 2026**
 PRONOUNCED ON **18th MARCH, 2026**

1. This is an Application filed under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023 for seeking bail in connection with C.R. No. 60 of 2025 registered with Nallasopara Police station for the offence punishable under sections 22(c) r/w 8(c) and 29 of the NDPS Act.

2. It is a case of prosecution that on 21.02.2025, during patrolling duty, officers of Anti Narcotic Cell, Mira Bhayander, Vasai, Virar Commissionerate found one auto rickshaw standing suspiciously at about 11:35 p.m., it's seen that one Nigerian lady was sitting in the auto rickshaw. As both i.e. lady and auto rickshaw driver were found suspicions, they were nabbed. The said

lady was having black-colour plastic bag with her. On inquiry, evasive answers were given. As suspicion was raised by the police officer and hence panchas were called after giving written intimation to said lady before the panchas, the bag with the lady was searched. 506.2 grams Mephedrone (MD) was recovered from her bag. During the body search of auto rikshaw driver, he was found carrying 14.6 grams Mephedrone (MD). They were arrested in connection with this crime. After completion of the investigation chargesheet is filed.

3. Learned Counsel for the Applicant submits that herein this case rigors of Section 37 of the NDPS Act do not apply for the reason that no commercial quantity of contraband has been seized at the instance of the applicant. It is further argued that there are inconsistencies in the statements made in the panchnama with regard to the quantity of contraband, as compared to the inventory panchanama. It is further contended that after the delay of about 6 days, the seized contraband was produced before the Magistrate for inventory panchanama. It is submitted that having regard to the facts of the case and material collected during the investigation, doubt is created with regard to recovery of contraband from the person of the accused and hence it is a fit case to for his enlargement on bail.

4. Learned APP opposed the application on the ground that there is evidence on record to connect present applicant with the co-accused from whom over 500 Grams of (MD) was recovered. It

is submitted that the applicant is not unknown auto rickshaw driver who has coincidentally took the accused as a passenger. However, there is evidence on record to show the contact between the applicant and co-accused so also the main accused who used to supply the contraband from foreign country. It is submitted that having regard to nature of offence and total recovery done at the instance of both accused persons, which is huge quantity of contraband, this is not a fit case for the grant of bail. To support the said submission she placed reliance on ***Union of India thr. Narcotics Control Bureau Lucknow Vs. MD. Nawaz Khan 2021 -10 SCC 100.*** in rejoinder Learned counsel for the applicant submits that in the cited judgment, it was a case of seizure of contraband from the vehicle and therefore the occupants of the vehicle were held to be liable for the said recovery. It is submission that here in this case there is no recovery from the auto rickshaw as said judgment has no application to the present case.

5. *Prima-facie*, perusal of the record indicate that this is a case wherein there was no previous information received in respect of contraband being carried by any person. Applicant and co-accused were found in suspicion condition in a auto rickshaw and therefore they were searched. There is material on record to indicate prior to personal search of the applicant due to notice under Section 50 was given to him further in presence of panch witnesses (MD) of 14.06 grams was seized. The said contraband was placed before the Magistrate for investory Panchanama and samples of contraband were sent to CA for its examination. There is CA report

on record confirming the seized articles to be MD. Thus there is *prima-facie* evidence on record to show the necessary compliance being done and involvement of the applicant in the crime could be seen.

6. Now the question arises as to whether it could be considered at this stage that applicant had possible knowledge of about 500 plus grams of MD being carried by the co-accused. In the instant case there is evidence on record to indicate that the applicant and co-accused were in regular contact with the supplies of contraband. Thus it cannot be said that this is a case wherein the coincidentally co-accused occupied auto rickshaw driven by the applicant. As such case recovery of the contraband article even from co-accused connects him with the crime. Thus there is *prima-facie* material on record to indicate that huge quantity of MD was seized from both accused. The rigor of Section 37 of the Act has application to this case. Since this Court does not find apparently that accused has not committed crime, this is not a fit case of grant of bail.

7. Consequently, application stands dismissed.

(R. M. JOSHI, J.)