

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3953 OF 2025
IN
CRIMINAL APPEAL NO. 1033 OF 2025

Faisal Shafikul Rehman Sayyed ...Applicant

IN THE MATTER BETWEEN

Faisal Shafikul Rehman Sayyed ...Appellant/
Org. Accused No. 3

Versus

The State of Maharashtra & Anr ...Respondents

WITH
INTERIM APPLICATION NO. 3958 OF 2025
IN
CRIMINAL APPEAL NO. 1020 OF 2025

Affak Aasif Sayyed ...Applicant

IN THE MATTER BETWEEN

Affak Aasif Sayyed ...Appellant/
Org. Accused No. 1

Versus

The State of Maharashtra & Anr ...Respondents

Mr Anil Lalla, with Yash Pulekar & Devang Rawal, for the
Applicant/Appellant in both matters.
Mr HJ Dedhia, APP, for Respondent No. 1-State.
Mr Vilas Kute, API, AEC MBVV, present.

CORAM: R. M. JOSHI, J.

RESERVED ON: 17TH FEBRUARY 2026

PRONOUNCED ON: 20TH FEBRUARY 2026

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ORDER:

1. These Interim Applications are for suspension of sentences and for enlargement on bail of the Applicants, Affak Aasif Sayyed (“**Affak**”), Accused No. 1 and Faisal Shafikul Rehman Sayyed (“**Faisal**”), Accused No. 3 in connection with Special Case (NDPS) No. 1 of 2023, whereby they were convicted and sentenced to suffer five years imprisonment with fine of Rs. 50,000/- with default sentence.

2. By consent of both sides, these Applications are heard and decided together since they involved similar facts and law.

3. Learned counsel for the Appellants submits that the appellants are handed over with fixed term sentence and, therefore, the Court is required to liberally consider their Bail Application as the Appeals are not likely to be heard in short time and, consequently, would become infructuous. On merit, it is his submission that here in this case, there is non-compliance of Sections 50 and 42 of NDPS Act. He took exception to the authority of a Havildar to take personal search of accused. According to him, the contraband involved in the case is not of commercial quantity. He takes exception to the impugned Judgment and Order by contending that no evidence indicating the accused been apprised of their right of being searched in presence of a Magistrate or Gazetted Officer and in view of the same, there is non-compliance of Section 50 of the NDPS Act. He drew attention of the Court to the evidence on record and

submitted that the person who conducted search had no authority in law to do so. In respect of Accused No. 3, Faisal, evidence is read over in order to submit that though there is a statement made with regard to the written notice issued to him, however, there is no evidence showing oral intimation about the right of the accused to get search in presence of the Magistrate. In this regard, he placed reliance on the Judgment of the Hon'ble Supreme Court in case of ***Ranjan Kumar Chadha vs. State of Himachal Pradesh***¹. He referred to paragraphs 63 and 64 of the said Judgment to buttress his submission. It is his further submission that the CA Report is not proved by examining the Chemical Analyser and as such the CA Report could not be relied upon to record conviction against them. Lastly, it is submitted that there is no evidence showing intimating sufficient quantity of contraband in order to analyse the same, so also, there is no evidence that the samples which were drawn under the Inventory Panchnama before the Judicial Magistrate were only the one sent to CA for examination. Thus, according to him, this is a fit case for enlargement of the Appellants on bail. It is claimed that the Appellants have no criminal history and that they are not likely to flee from justice. He places reliance on the following other Judgments:

- (a) ***Vijaysinh Chandubha Jadeja vs. State of Gujarat***,²
- (b) ***Mohinder Kumar vs. State of Panaji, Goa***,³

1 Criminal Appeal Nos. 2239-2240 of 2011 (Apex Court)
 2 Criminal Appeal No. 943 of 2005 (Apex Court)
 3 Criminal Appeal No. 399 of 1992

- (c) *Mohd. Hussain Babamiyan Ramzan vs. State of Maharashtra*,⁴
- (d) *Shiv Kumar Ashok Mishra vs. Special Judge of N.D.P.S. Court, Mapusa-Goa (State)*,⁵
- (e) *Sushant Sambhaji Rasal vs. State of Maharashtra*,⁶

4. Learned APP opposed the said contention by submitting that the Police Head Constable and Havildar of the equivalent rant and as such it cannot be said that the search conducted by the Police Havildar is illegal. It is submitted that the evidence on record fairly indicted about the accused being informed their right of being searched in presence of the Magistrate or Gazetted Officer and since it was refused by the accused in writing, there is due compliance of Section 50 of the NDPS Act. Insofar as Section 42 of the NDPS Act is concerned, it is his submission that the evidence on record sufficiently demonstrates the said compliance. He opposes the grant of bail to the Appellants on the ground that the offence is serious in nature and the evidence on record proves the charge against them.

5. No doubt the Court is required to consider the case of the convict liberally in the event convict is sentenced to suffer imprisonment for a fixed term. However, at the same time, the law on the point of suspension of sentence enlargement of the convict is fairly settled to say that the Appellant has to make out a case of

4 Criminal Appeal No.445 of 1992 with Criminal Appeal No. 438 of 1992 (Bombay High Court).

5 Criminal Appeal No. 22 of 1994 (Bombay High Court).

6 Criminal Bail Application No. 1760 of 2021 (Bombay High Court).

fair chance of success in the Appeal and only on making out such case, substantive sentence could be suspended.

6. Perusal of the record *prima facie* indicates that the prosecution examined 11 witnesses for the purpose of proving the seizure of contraband articles, i.e., Mephedrone from accused persons. PW-1, Police Havildar, Yadav, who took personal search of the accused, has specifically deposed about accused being apprised of his right of search to be taken in presence of the Magistrate or Gazetted Officer. He further states that the accused in writing has allowed the search to be taken and, therefore, he was searched and contraband was found. Similar is the case in respect of Accused No. 3, Faisal. Perusal of the cross-examination of the witnesses does not indicate that any exception was taken to the said testimony of the witness with regard to accused being apprised of their right to get search in presence of the Magistrate or Gazetted Officer.

7. It would be relevant to take note of the Judgment of the Hon'ble Supreme Court in case of ***Ranjan Kumar Chadha*** (Supra), wherein the Hon'ble Supreme Court while dealing with the said issue has held that “ Before conducting a search, it must be communicated in clear terms through it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.”. The said observations of the Hon'ble Supreme Court clearly indicate that the communication need not be in writing and it is permissible to convey orally. Here in this case, the communication is in writing as

it could be seen from the oral evidence as well as the evidence of panchnama conducted at the time of seizure of the contraband articles in the personal search of the accused persons. Thus, the said Judgment in fact supports the case of the prosecution rather than the defence sought to be made out by the accused.

8. It is argued that there is raid conducted in the premises after sunset and, therefore, the entire exercise done by the investigating agency is bad in law. Perusal of the evidence led by the prosecution indicates that at the first instance the contraband articles were seized from the personal search from the Accused No. 1, Affak. Thereafter, the said search led to Accused No. 2 and, finally, to Accused No. 3. When it came to the knowledge of the agency with regard to the material information about contraband articles being obtained from Accused No. 3, Faisal, it was justified for the agency to immediately take action in this regard. It is pertinent to note that the information received to co-accused gets fortified with seizure of contraband articles in the personal search of Accused No. 3. At this stage, at least, it cannot be said that the action of the investigating agency with regard to the conducting search of Accused No. 3 is illegal.

9. As far as the present stage of the proceeding is concerned, this Court is not expected to go into the details of the evidence, which could be done only at the time of hearing of the Appeal finally. Suffice it to say that *prima facie* consideration of evidence on record, shows that there is sufficient evidence in order to uphold the Judgment and Order of conviction. In view of nature

of offence and the evidence appearing against the Applicants/Appellants, this is not the fit case for grant of bail.

10. The Applications stand dismissed.

11. It is clarified that the above observations are made *prima facie* and for purpose of determination of the present Appeals and the same shall not bind parties at the time of hearing and decision of Appeals on merit.

12. Appeal stands expedited.

(R. M. JOSHI, J.)