

Ajit Pathrikar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 661 OF 2026

Saifullah Allahbaksh Khan ...Applicant

Versus

The State Of Maharashtra ...Respondent

Mr. Dilip Mishra *a/w Ayaz Khan, Zehra Charania and Mallika Sharma, for the Applicant.*

Ms. Poonam P Bhosale, *APP for the State-Respondent.*

API – Sumit Ghadge, *D. N. Nagar Police Station, is present.*

CORAM DR. NEELA GOKHALE, J.

DATED: 18th FEBRUARY 2026

PC:-

1. The Applicant seeks his release on bail in connection with C.R. No. 427 of 2025 dated 7th April 2025 registered with the D. N. Nagar Police Station for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and Section 111 of the Bharatiya Nyaya Sanhita, 2023.

2. The facts of the case reveal that on 6th April 2025, the officials of the D.N. Nagar Police Station were on patrolling duty from 23:00 hours. While they were patrolling, they received information from their secret source on 7th April

2025 at 00:30 hours that was one person, accompanied by his son, were preparing and packing contraband for sale, in their residential premises. The said information was communicated to the superiors and orders were received to conduct the search by raiding the premises. Panchas were called and after following the due process of the NDPS Act, the premises were searched. It appears from the statement in the FIR that the son of the Applicant opened the door of his house and upon seeing the police, ran away. The present Applicant was caught and apprehended by the police. On the personal search of the Applicant, a plastic pouch was recovered from his pocket containing a white powder. The said powder was found to be 57 grams of Mephedrone. Accordingly, the Applicant was arrested on 7th April 2025 itself, pursuant to the registration of the FIR.

3. The Applicant made an application seeking bail before the Special Judge (NDPS), City Civil and Sessions Court, Gr. Bombay. However, by order dated 3rd February 2026, the said

application was rejected. Hence, the Applicant is before this Court seeking the relief as prayed.

4. Mr. Dilip Mishra, learned counsel for the Applicant, submits that there is total non-compliance of Section 42 of the NDPS Act. Since the police received information from secret sources, they were bound to reduce the information into writing and convey it to the senior officer in that regard. However, according to him, the same was not done. He also points to the recording of the panchanama and the statement comprising the complaint. In the complaint, according to him, there is a discrepancy in the time at which the panchas were called and the time recorded by the panchas in the panchanama. He submits that this discrepancy in recording of time is significant and clearly indicates that the Applicant has not committed the offence as alleged. He also points to the recording in the panchanama that two accused were nabbed. However, in the charge-sheet, it is clearly shown that one accused namely, the son of the present Applicant, has

absconded. Hence, the question of giving a copy of the panchanama to the second accused does not arise. Mr. Mishra has further arguments and submissions, on merits. However, he submits that only on these three grounds alone, the Applicant deserves to be enlarged on bail.

5. Ms. Poonam Bhosale, learned APP, on instructions from the Investigating Officer, API-Sumit Ghadge, makes an attempt to explain the discrepancy as a typographical error in recording the statement as well as the panchanama. She submits that 57 grams of Mephedrone was seized and recovered from the pocket of the Applicant and it is quite clear that he has committed the offence as alleged. She also submits that the Applicant has seven antecedents, one of which relates to recovery of a non-commercial quantity of Mephedrone. She thus submits that it is likely that the Applicant will repeat the said offence if released on bail. In these circumstances, she prays that the Bail Application be rejected.

6. I have heard learned counsel appearing for the respective parties and perused the record with their assistance.

7. The methodology adopted by the police in apprehending the Applicant; complying with Section 42 of the NDPS Act; recording the complaint; and recording the panchanama, leaves much to be desired. The statement along with the complaint clearly indicates that on 6th April 2025 at 11:00 p.m. (23:00 hours), the police party set out for patrolling. On 7th April 2025, in the wee hours of the morning i.e. at 00.30 hours, they received information from their secret sources. They carried the raid forward and at 00.55 hours, they called the panchas. Accordingly, the raid took place in the presence of panchas and the said Mephedrone was recovered from the pocket of the Applicant. The complaint also notes that the Applicant's son, who was also present in the house, ran away and is now shown as absconding.

8. The facts recorded in the complaint when compared with the recording of the panchanama, reveal a discrepancy. The panchanama also correctly records that on 7th April 2025 at 00:50 hours, the panchas were called and the raid took place. However, the statements of the panchas record otherwise. The statement of the first panch namely, Satyanarayan Swaminath Gupta, records that he was called at 22:00 hours on 7th April 2025 i.e. in the late evening of that day, whereas the raid itself had taken place in the morning on 7th April 2025 at 00:50 hours. The statement of the second pancha namely, Mohd. Ismail Maharuf Shaikh, also records the same. It appears that these two statements of the panchas are a copy-paste of each other, save and except for some minor modifications. This is a significant discrepancy in the timing recorded in the complaint and the panchanama, as it appears in the statements of the panchas.

9. The statements of the panchas also record that two accused persons were nabbed and that a copy of the

panchanama was given to the two accused persons. Whereas, in fact, there was only one person i.e. the Applicant, who was apprehended and the second accused namely, the Applicant's son, had absconded from the place itself. This clearly indicates that there is gross negligence on the part of the Investigating Officer and the persons in the raiding party in conducting the raid; recording the complaint; recording the panchanama; and recording the statements of the panchas. This entire discrepancy inures to the benefit of the accused i.e. the Applicant. Hence, there are reasonable grounds to believe that the Applicant has not committed the offence as alleged.

10. In these circumstances, I am left with no alternative but to enlarge the Applicant on bail on the following conditions:

ORDER

i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;

- ii) The Applicant shall attend the Police Station concerned, on first Monday of every month between 10:00 a.m. and 12:00 p.m., till the charges are framed. He shall also attend the Trial Court concerned on each and every date as directed, till the conclusion of the trial, save and except if the Applicant is exempted from appearance by orders of the Trial Court.
- iii) If the Applicant holds a passport, he shall deposit the same with the Police Station concerned;
- iv) The Applicant shall not leave India, without permission of the trial Court;
- v) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- vi) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vii) The Applicant to co-operate with the conduct of the trial;

viii) Any infraction of the aforesaid conditions shall entail cancellation of bail.

11. Application is allowed in the above terms and is accordingly disposed of.

12. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(Dr. Neela Gokhale, J)