

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1212 OF 2026

Mohd. Kalim Samim Choudhary

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Faiz Merchant a/w Faisal F. Shaikh, Uma Nemlekar, Gautam Parvekar and Omar Shah for the Applicant.

Mr. R.M. Pethe, APP for the Respondent-State.

Mr. Santosh Dhadve, API, Navghar Police Station.

CORAM:

R. M. JOSHI, J.

RESERVED ON

09th APRIL, 2026

PRONOUNCED ON

15th APRIL, 2026

PC:-

1. Applicant seeks bail in connection with CR No.27 of 2025 registered with Navghar Police Station, for the offences punishable under Section 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short '**NDPS Act**').

2. In short, it is a case of the prosecution that during regular nakabandi, Blue Color Baleno Car bearing no. MH-03 DA-4664 was intercepted. On interception by the police personnel, two persons occupying the car fled away, driver of the car attempted to flee but

was unsuccessful. He was nabbed by the police, he along with the car was brought to the police station. At the said place, search of the car was to be taken and it was noticed that there were two packets kept on the dash-board of the said car. Police at this stage apprehended the said packets containing narcotic drugs, and therefore, panchas were called. In presence of panch witness search of the vehicle was taken and two packets weighing 2 Kgs., 29 grams were seized. According to the police personnel the said packets had strong smell which indicated it to be purported contraband (MD). Inventory Panchnama was drawn. Seized samples were sent to CA for examination. C.A. report indicates the seized articles to be Mephedrone (MD). On conclusion of the investigation, chargesheet is filed.

3. Learned counsel for the applicant seeks bail, firstly on the ground that co-accused are enlarged on bail. Secondly, on merit he claims that there is doubt created with regard to the seizure of the contraband considering the procedure followed by the police personnel. It is denied that applicant had any knowledge with regard to the said contraband. Objection is also sought to be raised with regard to the manner in which the vehicle was taken to the

police station and after lapse of substantial time, search was shown to have taken of the car in which contraband was seized. It is his submission that in case the vehicle was intercepted at the place near the Tolnaka the search ought to have been taken there only. He further argues that it is not possible that police personnel would not notice two packets kept on the dash board of the car and it could only be noticed only after vehicle was taken to the Police Station. It is his further submission that the facts like the time of calling panchas, weighing articles and obtainment of C.A. Report all these circumstances create doubt about the search and seizure and the possibility of tampering of evidence therefore, is not ruled out. According to him, co-accused is enlarged on bail. Learned counsel for the applicant also submits that applicant has no criminal history, and if he is enlarged on bail he is not likely to commit a similar crime. He further argues that there is no possibility of commencement and conclusion of trial within a reasonable time, therefore, applicant is entitled for bail.

4. Learned APP, opposed the application firstly relying upon provisions of Section 37 of the Act, which create embargo to grant bail in case of seizure of contraband of commercial quantity.

Learned APP states that while taking routine checking of vehicles, police intercepted a Blue Color Baleno Car which admittedly was driven by the applicant. By drawing attention of the Court to the CCTV footage, he submits that the said contention of the police personnel gets fortified with the said evidence. According to him, on the basis of suspicion that vehicle was appearing to be stolen, it was brought to the police station. It is thereafter, when the police personnel realised that the packets kept on the dash board could be narcotic drug, panchas were called and further procedure as contemplated by the act was followed. He drew attention of the Court to the statement of the accused person which revealed the spot where the said packets were received by the applicant and co-accused before they were intercepted by the police. It is his submission that this clearly shows nexus between earlier incident of the same day of receiving packets and seizure thereof in presence of panch witness. It is his submission that in view of the provisions of the Act, it is needed to consider that applicant was in conscious possession of the contraband.

5. In support of this submission, he placed reliance of judgment of the Hon'ble Supreme Court in the case of *Bishwajit*

Dey Versus State of Assam (2025) 3 SCC 241 and Mandan Lal and Another Versus State of H.P (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLine SC 874.

6. At this stage the Court is required to see as to whether there is reason to accept that there was seizure of contraband of commercial quantity at the instance of present applicant. Perusal of the application indicates that applicant does not dispute the fact about him driving the vehicle in question i.e. Blue color Baleno Car at the relevant time. Further, he claims to have no acquaintance with the occupiers of the car, which confirms the fact that the car was occupied by other persons too. After interception of said car, two persons fled from the spot and while applicant attempted to escape he was apprehended by the police. There is statement of applicant recorded under Section 31 of the Bhartiya Sakshya Adhiniyam, 2023, pursuant to which the spot was discovered where the applicant and co-accused accepted the packets which were kept in the vehicle i.e. Baleno car. This fact is supported by the CCTV footage of the said area which indicates that one person came near the car, took a bag from the occupant's car, and handed over the articles to them. Thus, there is sufficient material on

record to show that there were some articles /bags given by the said third person to the occupants of the car. It would be the matter of trial if the applicant satisfies the trial Court about the said aspect. *Prima-facie* there is evidence on record to say that there were packets in the car. It is pertinent to note that though the applicant denies the knowledge of the contents of the said packets, he does not attribute planting of the same by the police. Apart from this Section 35 of the Act, provides for presumption of culpable mental state. No doubt it is for accused to prove during trial about non-existence of mental state.

7. There is further evidence in order to indicate that the weight of the seized articles was over 2 Kgs. and the C.A. report confirmed that contraband seized is Mephedrone. The quantity of the contraband seized is of commercial quantity and therefore it is needless to say that the rigors of Section 37 of the Act would apply to the present case.

8. Apart from the fact that admittedly applicant was found driving the vehicle and also was present in the car, when the parcel was received. Moreover, there is statement of Mr. Gaikwad indicating that the applicant had paid amounts to him, if the

applicant is driver of the vehicle, there was no question of he paying anything to the owner of the vehicle. This Court therefore, finds no substance in the claim of the applicant that he merely was driver of the vehicle and had no knowledge either of the occupants of the vehicle or the purpose for which the vehicle was taken.

9. It is sought to be argued on behalf of the applicant that it is not possible to accept that police did not notice the packets kept on dash board of the car. It may be so however, as it appears from the record, the interception of the car was routine and it is only after two occupants of the car fled, suspicion was raised by the police about the car being stolen, in such circumstances it is possible that not much attention is paid to the articles kept in the car at the first instance. The act of the police personnel to take car to the police station also cannot be faulted. In absence of any specific case being made out of planting of the contraband, this Court finds no reason to accept the case of the applicant in this regard, at this stage.

10. The above discussion clearly shows that this is a case wherein possession of the contraband needs to be accepted. *Prima-facie* conclusion is inevitable in view of the provision of Section 35 of the Act. Once it is held that the contraband articles involved in

the case are of commercial quantity, unless the court records its belief that the applicant has not committed the crime and he is not likely to commit the same and he be enlarged on bail. The Court gets no power to grant bail, in the facts of the case this Court is unable to record any such belief.

11. The Application therefore, stands dismissed.

(R. M. JOSHI, J.)