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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [BA] NO.376 OF 2026.

Ashish Prakash Walke,
Aged about 29 years, Occupation
Labour, resident of Rajiv Gandhi
Nagar, Magzin Road, Near Budha
Vihar, Chandrapur, Tahsil and
District Chandrapur.
(Presently at District Prison,
Chandrapur.

.... APPLICANT.

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Ramnagar,
District Chandapur.

.... NON-APPLICANT.

Shri R.M. Daga, Advocate for the Applicant.
Ms T. Udeshi, A.P.P. for the Non-applicant/State.

CORAM : M.M. NERLIKAR, J.

DATE : APRIL 20, 2026.

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ORAL ORDER :

Heard the learned Counsel for the Applicant and the learned A.P.P. for the Non-applicant State.

2. The applicant came to be arrested in connection with Crime No.853/2025 registered with Police Station Ramnagar, District Chandrapur for the offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985, (NDPS).

3. The first information report came to be lodged by Sarvesh Belsare, a police official from Crime Branch Chandrapur alleging that on 27.10.2025 a secret information was received that the applicant along with his friend would be coming in a car at Mul Road, Near Forest Academy, Chandapur for selling M.D. Drugs. On this information, a white colour swift car was intercepted and on search, in the presence of the Gazetted Officer and panch witnesses, two plastic packets containing

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white coloured powder weighing 160 gms of MD (Mephedrone) was found. Other articles were also seized and based on this information, the first information report came to be lodged.

4. The learned Counsel appearing for the applicant submits that the charge-sheet was filed without Forensic Science Laboratory Report. He further submits that in order to defeat the right provided under Section 187(3) of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS)/Section 167[2] of the Code of Criminal Procedure, charge-sheet was hurriedly filed, without any Chemical Analysis report. Therefore, without going into the merits of the matter, the applicant be released on regular bail. In support of this contention, he has relied on the judgment of Supreme Court in case of **Jabir Kha VS State of Madhya Pradesh, (Criminal Appeal No.2088/2025)**, wherein the Supreme Court has considered the very same issue and had granted interim bail to the appellant therein.

5. My attention is invited to the order of High Court of Madhya Pradesh, at Indore, from which case, the above Criminal Appeal was

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preferred by Jabir Kha. He further submits that the issue is still pending before the Larger Bench of the Supreme Court, for consideration as to whether a charge-sheet without the FSL/Examiner's Report in a NDPS case can be termed as an 'Incomplete Report' under Section 173 of Code of Criminal Procedure. It is submitted that there are divergent views of different High Courts, and therefore, the matter was referred by the Supreme Court to the Larger Bench and now it is under consideration. It is submitted that during the pendency of the issue, the Supreme Court has granted interim bail to the petitioners therein, which is to operate until further orders. He submits that even in the present case also, the Forensic Science Laboratory report was not part and parcel of the charge-sheet, however, it was filed afterwards i.e. on 08.12.2025, therefore, he prayed to grant bail to the applicant by allowing the application.

6. On the other hand, the learned A.P.P. vehemently opposes the application and submits that there are serious allegations against the present applicant as Mephedrone (MD) powder was found in his possession. She further submits that considering the allegations, the applicant does not deserve to be enlarged on bail. It is submitted that the

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contraband is of commercial quantity and rigour of Section 37 of NDPS would be applicable.

The learned A.P.P. further submits that the applicant cannot claim bail under Section 167[2] of the Code, by invoking the provisions or by applying for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)/Section 439 of the Criminal Procedure Code. The parameters laid down under Section 187(3) of the BNSS/ Section 167[2] of the Code for grant of bail altogether stands on a different footing. Making an application under Section 483 of the BNSS/Section 439 of the Code, could not be construed as the accused availing of his indefeasible right to default bail, and therefore, it is submitted that if the accused is claiming bail under Section 187(3) of the BNSS/ Section 167[2] of the Code, then the application under Section 483 of the BNSS /Section 439 of the Code would not be maintainable. She submits that therefore, there is no merit in the application and the same deserves to be rejected.

7. Firstly I will deal with the issue raised by the learned A.P.P. that – Whether application under Section 483 of the BNSS /Section 439 of the Code would be maintainable seeking bail under Section 187(3) of

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the BNSS/Section 167[2] of the Code, in the present circumstances ?

8. To decide the said issue, useful reference can be made to the judgment of Delhi High Court in case of **Subhash Bahadur @ Upender .vrs. The State (NCT of Delhi) - Bail Application No.3141/2020** decided on 06.11.2020, specifically paragraph nos.19, 20, 25 and 42 therein, which reads as under :

“19. According to Ms Chauhan, learned APP, it is not sufficient that the petitioner had made an application for bail. According to her, it would be necessary for an accused to apply for bail specifically mentioning the provisions of Section 167(2) of the Cr.PC and any application moved under Section 439 of the Cr.PC could not be construed as the accused availing of his indefeasible right to default bail.

20. Thus, the question that falls for the consideration of this Court is whether an application for a bail under Section 439 Cr.PC would be sufficient for a court to construe that the accused had availed of his right to be released on bail under the provisions of Section 167(2) of the Cr.PC if the condition stipulated therein were met.

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25. *In Rakesh Kumar Paul (supra), the right to apply for default bail in terms of proviso (a) to Section 167(2) of the Cr.PC had accrued to the accused (appellant therein) on 04.01.2017. The chargesheet in that case was filed on 24.01.2017 and on that date, his right to secure a default bail stood extinguished. The petitioner had applied for a regular bail on 11.01.2017 before the Gauhati High Court, but he had not made any specific application for default bail. The Court noted that in that case, the accused had mentioned that the statutory period for filing the chargesheet had expired and he had also argued the issue orally. However, the same was not accepted. In the aforesaid context, the Supreme Court held that the petitioner had made an application for default bail, if not in writing, then orally. The Court further observed as under:*

“40. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for “default bail” or an oral application for “default bail” is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a charge-sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.”

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42. *As explained by the Supreme Court in a number of decisions, the Proviso to Section 167(2) of the Cr.PC is intrinsically linked to the right under Article 21 of the Constitution of India that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. It embodies a safeguard that circumscribes the power to detain an accused pending investigation. Keeping this principle in mind and the consistent view of the Supreme Court that in matters of personal liberties, it would not be apposite to curtail the same on technicalities, this Court is of this view that the petitioner would be entitled to default bail. This is also considering the fact that the petitioner had indicated in unequivocal terms that he desires to be released on bail and he is ready to furnish surety for the same.”*

9. Another useful reference can be made to the judgment of this Court in case of **Ranjeet Manohar Machrekar .vrs. The State of Maharashtra - Criminal Bail Application No.509/2014** decided on **14.07.2014**, wherein in paragraph no.14 this Court has held as under :

“8. The applicant was, therefore, entitled to be released on bail, in view of the first proviso to Section 167[2] of the Code, as modified by Sub-section [4] of Section 36A of the N.D.P.S. Act. The learned Judge

was not right, firstly, in keeping the bail application pending and secondly, in refusing bail, on the ground that the plea for mandatory bail was not raised by the applicant when the applicant and the other accused had previously applied for bail.”

10. So far as the present case is concerned, admittedly it appears from the record that the applicant has filed an application under Section 483 of the BNSS /Section 439 of the Code of Criminal Procedure and perusal of the prayer made therein reveals that it does not speak of releasing him on bail under Section 187(3) of the BNSS/ Section 167[2] of the Code. However, the applicant has made averments in paragraph no.8 of his application, regarding default bail, stating that Chemical Analysis report was not filed along with the charge sheet showing the contraband, which was seized was M.D. Drug, therefore, charge-sheet cannot be accepted, as it can be termed as an incomplete charge sheet, and therefore, the applicant would be entitled for default bail. It is a settled law that even if the accused has made a written application or oral request to the Magistrate, in respect of default bail, the Magistrate is empowered to release him on bail considering the parameters laid down under Section

187(3) of the BNSS/Section 167[2] of the Code.

11. Even the Delhi High Court has clarified that when the question of personal liberty of an accused/person is concerned, the Court cannot be too technical and must lean in favour of the personal liberty.

Therefore, keeping in mind the above quoted observations of the Supreme Court, in the case of **Rakesh Kumar Paul .vrs. State of Assam – (2017) 15 SCC 67**, and further the observations in case of Subhash Bahadur [supra] by the Delhi High Court and our High Court in case of Ranjeet [supra], I am of the considered opinion that even if the bail application under Section 483 of the BNSS /Section 439 of the Code of Criminal Procedure is preferred for claiming bail under Section 187(3) of the BNSS/Section 167[2] of the Code of Criminal Procedure, the same would be maintainable. There is no bar as such, as Section 483 of the BNSS /Section 439 of the Code of Criminal Procedure deals with special powers of the High Court or the Court of Sessions, regarding bail. Therefore, I hold that in the given circumstances, the present application is maintainable.

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12. Now, so far as the other contentions of the applicant that the investigating officer has filed charge-sheet without Chemical Analysis report is concerned, the said issue is pending before the Larger Bench of the Supreme Court in case of **Mohd. Arbaz and others .vrs. State of NCT of Delhi, (Special Leave to Appeal (Cri.) No(s). 8164-8166/2021 dated 18/07/2024)**, and after noticing that there are conflicting views of different High Courts, the Supreme Court has observed as under:-

“1. In this batch of cases, the primary issue that arises for consideration is as to whether a chargesheet without the FSL/Examiner's Report in a NDPS case can be termed as an incomplete Report' under Section 173 Cr.P.C.?”

In the same order, the Supreme Court in Paragraph No.8 has observed as under:-

“8. The orders granting interim bail to the petitioners shall continue to operate until further orders.”

13. It is further to be noted that in the present case, the charge sheet was filed on 21.01.2026, without there being Chemical Analysis report. Admittedly it appears from the record that the Chemical Analysis

report was prepared on 08.12.2025, and it was forwarded to the Police Station, which was received by the Police Station on 16.12.2025. However, if the date of filing of charge sheet is considered i.e. 21.01.2026, it could be gathered that much after receipt of the Chemical Analysis report, the charge sheet came to be filed, however, for the reasons best known to the Investigating Officer, the Chemical Analysis report was not made part and parcel of the charge-sheet. An explanation was tried to be put forth by the learned A.P.P. that the investigation in the matter was carried by the Local Crime Branch, and the Chemical Analysis report was received by the police station, cannot be accepted. It is further to be noted that the said Chemical Analysis report was tendered before the trial Court by moving a letter / communication dated 13.03.2026 by the Police Inspector, Police Station, Ramnagar. The Chemical Analysis report was enclosed along with this letter. Thus, almost after two months from the filing of the charge-sheet the Chemical Analysis report was sought to be placed on record. In such circumstances, again it would be useful to refer to the order of the Supreme Court in case of Jabir Kha (supra), wherein the Supreme Court has observed as under:-

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“The contention of the appellant was that the charge-sheet was hurriedly filed, as statutory period of 180 days for completing the investigation was to be over on 23rd October, 2024. The charge-sheet was filed without FSL report in respect of MD, only with a view to defeat the right of the appellant to get statutory bail.

A strange procedure appears to have been followed by the Special Court under the NDPS Act. An order was passed on 3rd December, 2024 recording that the FSL report was not received and that the Special Public Prosecutor requested for grant of time to file FSL report. The Court granted time till 13th December, 2024. On that day, FSL report was simply tendered across the Bar without filing a supplementary charge-sheet. Admittedly, the date of the report is 26th September, 2024. If the date mentioned is correct, it was very much available when the charge-sheet was filed. Strangely, this report was placed on record on 13th December, 2024 without filing a supplementary charge-sheet.

Prima facie, it appears that this conduct on the part of the prosecution is very strange. There are no antecedents brought on record of the appellant. The appellant is in custody for the last one year. Considering the peculiar facts of the case, the appellant deserves to be enlarged on bail till the conclusion of the trial.”

14. Therefore, in view of the observations of the Supreme Court, it is crystal clear that the trial Court ought not to have accepted the said

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Chemical Analysis report. It was the duty of the investigating officer to tender the same along with the supplementary charge-sheet, as was observed by the Supreme Court that a strange procedure has been followed. Thus as is observed above, that though the Chemical Analysis report was available with the investigating agency on 16.12.2025, the charge sheet was filed much after that without including the Chemical Analyzer's report. In such circumstances, the applicant would be entitled for bail under Section 187(3) of the BNSS/Section 167[2] of the Code, since charge sheet was filed without enclosing the Chemical Analysis report.

15. It is to be further noted that the issue in respect of – Whether charge-sheet without Forensic Science Laboratory's report in NDPS cases can be termed as incomplete report under Section 167 of the Code, is already pending before the Larger Bench of the Supreme Court and the Supreme Court has granted interim bail to the petitioner therein. Therefore, considering the above factual background and the orders of the Supreme Court, Delhi High Court as well as this Court, prima facie, it appears that, in case at hand the Forensic Science Laboratory report was

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not part and parcel of the charge-sheet and further it was simply tendered by moving an application by the police officer without resorting to the procedure of filing supplementary charge-sheet, which amounts to following of strange procedure by the Special Court under the NDPS Act.

16. Taking over all view of the matter, though, prima facie, there are serious allegations against the applicant, however, considering the fact that the Forensic Science Laboratory (Chemical Analysis) report was simply tendered across the bar without filing supplementary charge-sheet, entitles the applicant to be released on bail, by imposing stringent conditions. Hence, the following order:-

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant /accused Ashish Prakash Walke be released on regular bail in connection with Crime No.853/2025 registered with Police Station Ramnagar, District Chandrapur for the offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985, (NDPS), on his furnishing P.R. Bond of Rs.50,000/- with two sureties in

the like amount.

- (iii) The accused shall not commit similar type of offence in future. In case he is found to have indulged into similar kind of offence, the State is at liberty to move for cancellation of bail.
- (iv) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (v) The accused shall provide his residential address and cell number to Police Station concerned and shall not change his place of residence without prior intimation to the Investigating Agency.
- (vi) The accused shall attend each and every date of trial regularly. If he fails to attend the trial for one single date, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail.
- (vii) The above observations are prima facie in nature, and restricted for the purpose of deciding this application. The Trial Court shall not get itself influenced by said observations, during the course of trial.
- (viii) Misc. Applications, if any, are also disposed of.

JUDGE