

Ashish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 286 OF 2025

Arshad Karar Khan ... Applicant
V/s.
State of Maharashtra ... Respondent

Mr. Taraq Sayed, for the applicant.

Mrs. Rajashree Newton, APP for respondent – State.

Mr.S.A. Mehetar, HC, Anti Narcotics Cell, Navi Mumbai.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 15, 2025

JUDGMENT:

1. This application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”) seeking regular bail. The applicant seeks his release in connection with Crime Register No. 72 of 2024 registered with APMC Police Station, Navi Mumbai, for offences punishable under Sections 8(c), 22(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”).

2. The prosecution case is that on 21 February 2024, Police Constable P. H. Tayde received specific information that Arshad Khan, residing at Lodha Pallava, Dombivali, would arrive between 19:15 hours and 19:30 hours at Pendhar Bridge Phata, Kamboli-Shilphata Road, Taloja, Navi Mumbai, to sell Mephedrone (“MD”) to his customers. The said information was reduced to writing and

forwarded to the superior officers for obtaining authorization as required under Section 42(2) of the NDPS Act. Two panch witnesses were arranged, and the raiding team proceeded to the spot and maintained surveillance.

3. Around 19:15 hours, a person matching the description given by the informer arrived at the location. The officers intercepted him. On inquiry, he disclosed his name as Arshad Khan, the applicant herein. He was informed of his right to be searched before a Gazetted Officer or a Magistrate as required under Section 50 of the NDPS Act. On conducting his personal search, one black bag was recovered from his left pant pocket. On inspection, it was found to contain a small plastic pouch with off-white crystalline powder suspected to be Mephedrone, weighing 500 grams. A mini electronic weighing machine, small plastic bags, and a mobile handset were also found in his possession. The seized articles were sealed and labeled in accordance with the NDPS Act. The applicant was arrested, and FIR No. 72 of 2024 was registered with Taloja Police Station for offences under Section 8(c) read with Section 22(c) of the NDPS Act on 21 February 2024.

4. Learned Advocate Mr. Taraq Sayed for the applicant submitted that the prosecution has not produced any Chemical Analyzer's report or field test report to show that the seized substance was Mephedrone. He pointed to the seizure panchanama of the mobile phone, which showed that the phone's location was at Belapur Village, CBD, while the alleged seizure occurred at Pendhar Phata. He further submitted that the certificate issued under Section 52(A)(3) of the NDPS Act bears a

seal different from the one on the forwarding form to the Chemical Analyzer, suggesting irregularity. He pointed out that the sample was sent to the Forensic Science Laboratory on 11 March 2024, indicating delay. He submitted that there is every possibility that the actual quantity of contraband was less than the commercial quantity. He argued that the applicant's three previous criminal antecedents cannot, by themselves, be a ground to deny bail.

5. Learned APP Mrs. Newton opposed the application. She submitted that during the personal search of the applicant, conducted in the presence of two panch witnesses, contraband Mephedrone weighing 500 grams was found in his possession. She submitted that a notice under Section 52 of the NDPS Act was served upon the applicant in the presence of a Gazetted Officer. The seized narcotic substance was produced before the JMFC, Panvel, who verified the seizure and issued an inventory certificate under Section 52(A) of the NDPS Act. Photographs of the seized material were taken and attached to the certificate. The contraband was sent to the Chemical Analyzer, and the report at Exhibit-A to the affidavit-in-reply dated 20 March 2025 confirmed the presence of Mephedrone (4-Methylmethcathinone) and Methamphetamine. The learned APP further submitted that during the investigation, the statements of two witnesses were recorded. Their statements revealed that the applicant procured the contraband from accused no. 2, a resident of Karnataka. The statement of witness Aman Wadgama shows that both the applicant and co-accused were known to each other and used to consume such substances. The applicant thereafter started

purchasing contraband for resale. It was submitted that the applicant is engaged in the business of selling narcotic substances for financial gain and was found in conscious possession of 500 grams of Mephedrone, a commercial quantity. She further submitted that the applicant has three previous cases of a similar nature, one in 2021 and another in 2023. Since the contraband seized is of commercial quantity, the rigours of Section 37 of the NDPS Act apply. Relying upon the judgment in *Narcotics Control Bureau v. Kashif* (2024) 11 SCC 372, she submitted that delay or lapse in compliance with Section 52(A) of the NDPS Act does not by itself vitiate the trial or entitle the accused to bail. The Court must consider the overall evidence, including the statutory presumption under Section 54 of the Act. She therefore prayed for rejection of the bail application.

6. Having heard both sides and on perusal of the record, the following reasons weigh against granting bail to the applicant.

7. The allegations against the applicant are serious in nature. The recovery is of 500 grams of Mephedrone, which is a commercial quantity under the NDPS Act . The seizure was made from the conscious possession of the applicant during a search conducted in the presence of two panch witnesses, after due compliance with the statutory procedure. Once recovery of a commercial quantity is established, the rigour of Section 37 of the NDPS Act stands attracted.

8. Under Section 37, before granting bail in cases involving commercial quantity, the Court must be satisfied that there are

reasonable grounds to believe that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. These two conditions are mandatory. The satisfaction of both is a sine qua non for granting bail. In the present case, neither of these conditions stands fulfilled.

9. The material placed before the Court, when examined as a whole, clearly indicates that the prosecution has complied with the essential procedural safeguards prescribed under the NDPS Act. The seizure panchanama records that the search was conducted in the presence of two independent panch witnesses after informing the accused of his right under Section 50 of the NDPS Act. This shows that the investigating officer acted within the framework of law.

10. After seizure, the contraband was sealed, labelled, and produced before the Judicial Magistrate, First Class, Panvel. The learned Magistrate verified the seal, examined the seized substance, and prepared an inventory as required under Section 52(A) of the NDPS Act. The inventory was accompanied by photographs of the seized material and samples drawn in the presence of the Magistrate. The certification issued by the Magistrate bears his signature and seal, thereby lending authenticity to the process.

11. Such compliance is not an empty formality. The legislative intent behind Section 52(A) is to ensure transparency and to protect both the accused and the prosecution from future disputes about tampering or substitution of samples. When the statutory

safeguards are observed, the presumption of regularity attaches to official acts, unless cogent evidence is shown to the contrary. In the present case, no such contrary material is placed on record.

12. Further, the report of the Forensic Science Laboratory, which is part of the case record, confirms the presence of Mephedrone (4-Methylmethcathinone) and Methamphetamine in the samples sent for examination. The report specifically notes that the sample was received in sealed condition with intact seals corresponding to those mentioned in the seizure and forwarding memos. The consistency between the panchanama, the forwarding form, and the Chemical Analyzer's report rules out any possibility of tampering.

13. The submission of the applicant that the prosecution has not produced any Chemical Analyzer's report or field test report to establish that the seized substance was Mephedrone cannot be accepted. The record indicates that the contraband was seized on 21 February 2024, duly sealed, labelled, and produced before the learned Judicial Magistrate, First Class, Panvel. The learned Magistrate verified the seal, certified the inventory, and forwarded the sample to the Forensic Science Laboratory (FSL) for analysis as required under Section 52(A) of the NDPS Act.

14. The report of the Chemical Analyzer, which forms part of the affidavit-in-reply dated 20 March 2025, has confirmed that the sample tested positive for Mephedrone (4-Methylmethcathinone) and Methamphetamine. The report specifically mentions that the sample was received with an intact seal corresponding to the

description in the forwarding memo. This leaves no scope for doubt regarding the identity of the material examined. The result of the scientific analysis thus conclusively establishes the nature of the contraband as a psychotropic substance within the meaning of the NDPS Act.

15. Even otherwise, the absence of a field test at the time of seizure does not by itself render the recovery doubtful. The field test is only a preliminary step to assist the investigating agency in identifying the nature of the substance on the spot. The evidentiary value rests primarily on the report of the Chemical Analyzer, which is obtained after proper laboratory testing. Once the Chemical Analyzer's report is available and confirms the nature of the substance, the requirement of field test becomes inconsequential.

16. It is also well settled that in NDPS cases, the ultimate proof of the nature of the substance is the report of the Chemical Examiner. The purpose of field testing is only to guide immediate investigative steps, not to establish guilt. The report on record has been issued by a government-approved laboratory and is admissible in evidence under Section 293 of the Code of Criminal Procedure. There is no material to suggest that the report is fabricated or unreliable.

17. Hence, the contention of the applicant that there is no material to show that the seized substance is Mephedrone is devoid of merit. The Chemical Analyzer's report on record, read with the seizure panchanama and the inventory certified by the

Magistrate, sufficiently establishes that the substance seized from the possession of the applicant was indeed Mephedrone, a psychotropic substance prohibited under the NDPS Act.

18. The defence contention regarding difference in seals or delay in dispatch of samples, even if assumed, cannot outweigh the substantive compliance established through documentary and scientific evidence. The Supreme Court has repeatedly held that minor procedural irregularities which do not cause prejudice to the accused will not invalidate an otherwise lawful seizure. What is important is whether the seizure and certification process preserves the identity of the contraband. In the present case, the evidence satisfies that requirement.

19. Thus, the entire sequence, from receipt of information, recording under Section 42(2), search in presence of panchas, sealing, production before the Magistrate, certification under Section 52(A), and scientific analysis, demonstrates adherence to the legal mandate. The Chemical Analyzer's report lends strong corroboration to the seizure panchanama and inventory, establishing that the recovered substance was indeed a narcotic drug within the meaning of the NDPS Act.

20. Therefore, at this stage, there is no reason to doubt the genuineness of the seizure or the integrity of the samples. The material on record prima facie establishes that the contraband recovered from the applicant was Mephedrone and Methamphetamine, both falling within the definition of psychotropic substances under the NDPS Act.

21. The defence contention that there was delay in sending the sample to the Forensic Science Laboratory or that the seals are different cannot by itself be a ground to hold that the seizure was fabricated or that the sample was tampered with. The Supreme Court in *Narcotics Control Bureau v. Kashif* (2024) 11 SCC 372 has held that minor procedural lapses or delays in compliance with Section 52(A) do not vitiate the trial or constitute a ground for bail. What is material is the substantive compliance of the provisions ensuring fair procedure, which in the present case stands prima facie established.

22. The argument that the location of the applicant's mobile phone was different from the spot of seizure cannot be accepted at this stage. Such technical discrepancies cannot outweigh the direct evidence of recovery from the applicant's person in the presence of panch witnesses. The question of exact location or movement of the accused can be examined during trial but is not decisive for the purpose of bail.

23. The statements of witnesses recorded during investigation also lend support to the prosecution case. The witness Aman Wadgama has disclosed that the applicant procured contraband from co-accused residing in Karnataka and that both were involved in the sale and distribution of the substance. This shows that the applicant was not a casual consumer but was actively engaged in illegal trafficking for profit. The chain of evidence thus indicates organized activity rather than isolated possession.

24. The applicant has three prior criminal antecedents of a similar nature. Though each case must be judged on its own facts, the past conduct of the applicant cannot be ignored while assessing the likelihood of reoffending. His repeated involvement in similar offences demonstrates a continuing tendency and negates the second condition under Section 37, namely, that he will not commit an offence while on bail.

25. The contention raised on behalf of the applicant that the seized quantity may be less than the commercial quantity cannot be accepted at this stage. The seizure panchanama, which was prepared contemporaneously at the spot, clearly records that the weight of the substance found in the possession of the applicant was 500 grams. The said panchanama bears the signatures of two independent panch witnesses, as well as of the investigating officer, thereby lending credibility to its contents. There is nothing on record to suggest that the panchanama is fabricated or that the weighing process was irregular.

26. The said recovery is further supported by the inventory certified by the learned Judicial Magistrate under Section 52(A) of the NDPS Act. The inventory records the same weight and description of the seized material, confirming that the contraband produced before the Magistrate was identical to that seized from the applicant. The Chemical Analyzer's report, received thereafter, also refers to the identical sample and confirms that the seized material contains Mephedrone and Methamphetamine. Thus, the prosecution has maintained consistency at every stage, and there is no material to indicate any discrepancy in the weight or identity of

the seized substance.

27. The suggestion that the actual contraband might be less than the commercial quantity appears to be a mere assumption without any supporting material. The statutory presumption under Section 54 of the NDPS Act, therefore, squarely operates against him. Once possession of a narcotic drug is established, the burden shifts to the accused to satisfactorily explain such possession or to show that it was not intentional.

28. In the present case, the applicant was found in physical possession of a bag containing the contraband. The search was conducted in his presence, and the contraband was recovered from his pant pocket. He was informed of his right under Section 50, and the seizure was witnessed by panchas. These facts show that the applicant was in conscious possession of the substance. No explanation has been offered by him either at the time of arrest or during the proceedings as to how the contraband came to be in his possession. Mere denial of knowledge is not sufficient to rebut the presumption.

29. Section 54 of the NDPS Act provides that when a person is found in possession of narcotic drugs or psychotropic substances, the Court may presume that he has committed an offence under the Act unless the contrary is proved. The presumption is not absolute but places a clear duty upon the accused to give a plausible and reasonable explanation consistent with innocence. The applicant, in the present case, has not discharged that burden.

30. In cases where recovery of a commercial quantity is supported by credible documentary and scientific evidence, the plea of mistaken identity of the substance or incorrect weighing cannot be entertained without strong proof to the contrary. The applicant has failed to produce any such material.

31. Therefore, on the basis of the seizure panchanama, the inventory certified by the Magistrate, and the Chemical Analyzer's report, it stands prima facie established that the seized contraband weighed 500 grams and was of commercial quantity. In view of the presumption under Section 54 and the absence of any satisfactory explanation from the applicant, the Court finds no merit in the submission that the recovered quantity was less than the commercial threshold.

32. The nature of the offence, the quantity of contraband, the corroboration by scientific evidence, the previous antecedents, and the statutory bar under Section 37 collectively create a strong prima facie case against the applicant. No material is placed on record to dislodge the presumption of culpability or to establish that the applicant is not guilty of the alleged offences.

33. In offences under the NDPS Act where the contraband seized is of commercial quantity, the balance between individual liberty and public interest assumes special importance. The right to personal liberty under Article 21 of the Constitution is undoubtedly valuable, but it is not absolute. In cases involving offences of this nature, the legislature has consciously imposed stricter conditions for the grant of bail, keeping in view the serious

menace that drug trafficking poses to society.

34. Drug trafficking is not an isolated act. It has wide-ranging social and economic consequences. It destroys families, endangers public health, and undermines law and order. The NDPS Act, therefore, treats such offences as a distinct class requiring deterrent control. Section 37 of the Act restricts the power of the Court to grant bail in cases involving commercial quantity. The Court cannot exercise discretion in the same manner as in ordinary offences. Before granting bail, the Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty and that he is not likely to commit any offence while on bail. These two conditions are mandatory and cumulative.

35. The Supreme Court has repeatedly held that in cases under the NDPS Act involving commercial quantity, the Court must exercise restraint and not grant bail as a matter of routine. The Court must give due weight to the legislative intent and the gravity of the offence. The principles of fairness and liberty must operate within the limits of the statutory framework. Unless the case falls within the narrow exceptions carved out by Section 37, bail cannot be granted.

36. In the present case, the applicant has not shown any exceptional circumstance such as procedural illegality going to the root of the case, lack of prima facie evidence, or any violation of fundamental rights that would justify departure from the statutory bar. The defence arguments regarding delay or discrepancy in seals are minor and do not affect the legality of the recovery.

37. Therefore, the case does not fall within the limited exceptions that would enable this Court to exercise discretion in favour of the applicant. In the larger interest of society and in keeping with the object of the NDPS Act to curb the menace of drug trafficking, personal liberty must yield to public interest. Hence, the applicant is not entitled to the relief of bail.

38. For these reasons, the Court is not satisfied that there are reasonable grounds to believe that the applicant is not guilty of the offences alleged or that he will not commit any offence if released on bail. The bar contained in Section 37 of the NDPS Act squarely applies. Hence, the application for bail stands rejected.

(AMIT BORKAR, J.)