Cr-Revn-422-26 C2.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 422 OF 2026

Nishant S. Modi ...Applicant

Versus

1.Union of India
Through Inspector Narcotics Control Bureau
Mumbai Zonal Unit, Mumbai

2. State of Maharashtra ...Respondents

SNEHA NITIN CHAVAN
Digitally signed by SNEHA NITIN CHAVAN
Date: 2026.11.04 18:46:55 +0530

****

Mr. Parvez Memon a/w Mr. Aditya Talpade, Mr. Pratik Karande and Mr. Akash Sabale for the Applicant.
Mr. Rajiv Chavan, Senior Advocate a/w Ms. Sumangla Yadav, Ms. Sonam Pandey, Ms. Asmi Desai, Ms. Siddhi Bhutada and Ms. Anjali Khapre for Respondent/UOI.
Mr. Swapnil Pednekar, APP for Respondent/ State.
Mr. Jagdesh Pander, I.O. present.

****

CORAM : M.M. SATHAYE, J.
DATE : 4th NOVEMBER 2026

P.C. :

1. This Criminal Revision Application is filed under Section 438 read with Section 442 of Bhartiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short), challenging order dated 10.08.2026 passed below Exh. 129 by Additional Sessions Judge, Pune under Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) in Special Case No. 227 of 2025. By the said impugned order, the Revision Applicant's application for discharge has been rejected.

2. The case arises out of FIR registered on 19.02.2024 with Samarth Police Station (subsequently transferred to Narcotics Control

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

Bureau, Mumbai Zonal Unit) in respect of seizure of 1837 kg 84 gram 120 mg of Mephedrone (MD). The Applicant is Accused No. 16. Applicant is a businessman engaged in courier services under the name and style of 'Express Hub International and Cargo,' being sole proprietor. The Applicant has no antecedents.

3. According to prosecution, on 19.02.2024 at about 02.00 hours, 500 grams of MD was seized from 2 persons pursuant to interception. On disclosure by said accused, one more person was intercepted on the same night and 500 grams of MD were seized from him. Further, 750 grams of MD along with electronic weighing scale was recovered from godown at Wadarwadi, Vishrantwadi, Pune.. The investigation was transferred to Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai. 16 persons came to be arrested in the course of investigation including Accused No. 9 - Sandeep Hanuman Singh Yadav and Accused No. 10 - Devendra Ramphool Yadav. Scrutiny revealed that remittances of Rs.15,67,000/- are sent from Applicant's bank account to Accused No. 10 and Rs.1,50,000/- to accused No. 9 under 18 to 20 separate occasions. Notices under Section 67 of NDPS Act wes served on the Applicant on four occasions and his statements were recorded in August 2024. Two further notices were sent, but he did not comply resulting in look-out-circular issued against Applicant. The Applicant was intercepted at Chhatrapati Shivaji Maharaj International Airport, Mumbai, on 17.09.2024 when he was returning from Dubai. The Applicant's statement under Section 67 was recorded on the same day by Narcotics Control Bureau, Mumbai office, where he has disclosed of money trail to Accused Nos. 9 and 10 and admitted to have financed for illicit drug trafficking.

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

4. The Applicant was arrested on 17.09.2024 for offences punishable under Section 8(c) read with Sections 22(c), 27A, 28 and 29 of NDPS Act. The Applicant's mobile phones were seized and sent for forensic investigation which has revealed multiple WhatsApp calls, voice calls and other digital communications between Applicant and co-accused. Applicant's bail application was rejected by the Special Court. However, this Court has granted him bail under order dated 06.01.2026. In such circumstances, the Applicant had filed application for discharge, which is rejected by the impugned order.

5. Learned Counsel Mr. Menon appearing for Revision Applicant has submitted as under.

5.1. That sufficient ground does not exist for proceeding further against Applicant. That the prosecution is principally relying upon the existence of financial transactions between the Applicant and Accused Nos. 9 and 10, which is nothing but legitimate courier business transactions. That there is no material to identify that such transactions were used for illegal drug trafficking. That mere suspicion cannot be equated with grave suspicion warranting framing of charges. That in the absence of identifiable nexus between Applicant’s bank transactions with Accused No. 9 and 10 with the alleged illegal drug trafficking, suspicion cannot be elevated to grave suspicion and therefore, it cannot be said that Applicant was financing the illegal trade.

5.2. That the worth of drugs seized is running into thousands of crores of rupees, from which Applicant is alleged to have contributed only a fraction of amount i.e. Rs.15,67,000/- and Rs.1,50,000/- that too over a long period of January 2023 to September 2023. That the Applicant is running legitimate business of courier services and the amounts are transferred in regular course of business for exporting courier

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

consignment using license of Sunpriya Collections which is the firm of Accused No. 9 and the amount is paid towards 'packing, taping and handling' charges.

5.3. That Applicant was using license of Sunpriya Collection because Applicant does not hold an international courier license and the courier charges were cheaper in Delhi. That amounts were transferred in the personal bank accounts of accused because the GST registration of Applicants' firm was cancelled and it was restored only in June 2023.

5.4. That bank statement of Accused No. 10 reveals that he was receiving money from other courier firms also, however, those persons are not made accused but they are taken as witnesses and prosecution has not identified any distinguishing material demonstrating the Applicant had additional knowledge or participation in the narcotic activities to separate him from other courier related persons who are made witnesses.

5.5. That statement of Applicant under Section 67 of the NDPS Act is inadmissible in view of Judgment of Supreme Court in **Tofan Singh V/s. State of Tamil Nadu (2021) 4 SCC 1**. That mere bank transactions with co-accused cannot constitute 'financing' under Section 27A of the NDPS Act. That it is inconceivable that drug business will be financed through bank transactions. That Applicant has not been found in possession of any contraband, there is no recovery or seizure or physical linkage to the contraband at the instance of Applicant. That the bank transactions are genuine and already explained. That prosecution has failed to identify any material showing that the amount transferred by the Applicant were used for procuring, transporting, storing, or distributing the contraband.

5.6. That quantity of contraband seized from other co-accused persons cannot be attributed to the Applicant. That there is no material

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

establishing criminal conspiracy under Section 29 of the NDPS Act. That the Applicant has fully co-operated with the investigation, however despite that, Applicant was arrested on 17.09.2024, even before he could comply with the summons to attend on 18.09.2024. That Applicant has been granted bail despite stringent conditions required under NDPS Act which must be read in favour of the Applicant. He relied on the following judgments in support of his submissions :

1. Union of India Vs. Prafulla Kumar Samal and Anr. (1979) 3 SCC 4.

2. Asim Shariff Vs. National Investigation Agency (2019) 7 SCC 148.

3. Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra (2008) 10 SCC 394.

4. Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao (2012) 9 SCC 512.

5. Ajay Kumar Gupta Vs. Union of India (2024) 9 SCC 455.

6. Rhea Chakraborty Vs. Union of India (Through Intelligence Officer, Narcotics Control Bureau, Mumbai and Anr.) 2020 SCC OnLine Bom 990.

6. On the other hand, learned Senior Advocate Mr. Chavan, appearing for the Respondent No.1 has opposed the revision application contending *inter alia* as under.

6.1. That the quantity of MD seized in the present case is huge which is 36,700 times the commercial quantity provided under law. He submitted that the huge drug trafficking racket is involved in the case and therefore the Applicant having financial transactions with the Accused Nos. 9 and 10, must face trial for the offences alleged.

6.2. He submitted that the Respondent is not restricting its case only

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

upon the statement under Section 67 of the NDPS Act in view of **Tofan Singh (Supra)**. He submitted that, there is independent material in the form of forensic investigation of Applicant's mobile phone, showing multiple whatsapp call, voice calls and other digital communication corroborating the financial transactions.

6.3. He submitted that it is Applicant's own case that his GST license was restored in June 2023 after which he claims to have raised invoices through Sunpriya Collection i.e. firm of Accused No.9 from October 2023 to February 2024. However, the remittances actually found by the prosecution are from January 2023 till September 2023, which involves period predating the claimed invoicing arrangement.

6.4. He submitted that the order granting bail is passed principally on the ground of period of incarceration and even this Court, while granting bail, has held that 'evidence will be required' and therefore, the bail order can have no bearing at the stage of discharge.

6.5. He submitted that the current status of the case is that the matter awaits framing of charges and commencement of trial. He submitted that there is substantial and repeated financing by the Applicant by way of remittances to Accused Nos. 9 and 10 on 18 to 20 separate occasions showing participation in trafficking of MD. He submitted that amount of remittances viz. Rs.15,67,000/- and Rs.1,50,000/- cannot be pitched against the huge market value of seized drugs and involvement in 'financing' is a matter of trial.

6.6. He submitted that since the Applicant did not comply with the notices under Section 67 on two consecutive occasions, look-out circular was required to be issued. He submitted that so far as the defence of running legitimate courier business is concerned, the airway bills, KYC documents, invoices and GST returns are neither proved nor exhibited on record and Applicant himself has stated that he will produce it with

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

the leave of the Court.

6.7. He submitted that Applicant's contentions if considered, it will amount to mini-trial, which is not permitted. He submitted that reliance upon **Rhea Chakraborty (Supra)**, will not help the Applicant at this stage and the said judgment is distinguishable on facts.

6.8. He submitted that reliance upon banking channels cannot conclude the issue because the transaction is rooted through bank account and it does not by itself establish legal character and purpose of payment. He submitted that Section 27A of the NDPS Act concerns financing illicit traffic and does not make physical possession of the substance as indispensable ingredient. He submitted that there is sufficient material for grave suspicion and therefore, impugned order rejecting request for discharge, does not require interference. He relied on following judgments in support of his case.

1. Union of India V/s. Prafulla Kumar Samal & Anr. (1979) 3 SCC 4.

2. Onkar Nath Mishra & Ors. V/s. State (NCT of Delhi) & Anr. (2008) 2 SCC 561.

3.Amit Kapoor Vs. Ramesh Chander and Anr. (2012) 9 SCC 460.

4. State (Through Central Bureau of Investigation) Vs. Dr Anup Kumar Srivastava. (2017) 15 SCC 560.

5. State of Rajasthan Vs. Ashok Kumar Kashyap (2021) 11 SCC 191.

6. Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey and Ors. (2022) 12 SCC 657.

7. I have considered the rival submissions and perused the impugned order.

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

8. It is not in dispute that the seizure of contraband in the present case is huge viz. over 1837 kg of MD which is thousands of times compared to the commercial quantity. The offence involved is very serious. It is an offence against society, especially the young generation.

9. It is not in dispute that there are bank transactions between the Applicant and Accused No. 9 and 10. It is also not in dispute that look-out circular was issued against the Applicant. The prosecution is also relying upon forensic investigation of Applicant's mobile phone which reveals multiple WhatsApp calls, voice calls and other digital communication between Applicant and co-accused, which is relied upon by the prosecution as independent corroborating material so far as financing is concerned.

10. The contention of the Applicant that he was paying packing, taping and handling charges to the firm of Accused No. 9 and for that purpose, was paying money and further contention that it was for legitimate courier business, will have to be tested at the time of trial.

11. Considering that apparently there is inconsistency in the timeline given by Applicant based on his cancellation and restoration of GST registration, financial transactions appears to be during period when GST was cancelled and prior to its restoration.

12. Perusal of page Nos. 581 and 582 of the revision compilation relied upon by the learned counsel for Revision Applicant indicates that KYC details as well as AWB details have been provided by Applicant under Section 67 of NDPS Act. Since the statement itself is

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

said to be not reliable by the Revision Applicant in view of **Tofan Singh (supra)**, the documents submitted along with it, also cannot be considered at this stage. Whether such material can be taken as proved in support of Applicant's contention about legitimate courier business and transaction, is squarely a matter of trial and cannot be considered before-hand on the basis of documents produced at the time of bail application or being part of documents submitted during statement under section 67 of NDPS Act. If statements under section 67 cannot be relied upon, even the documents stated to have been given by the Applicant with such statement cannot be considered as proof. Therefore, the whole aspect of whether the Applicant is engaged in legitimate courier business or was financing Accused Nos. 9 and 10 for drug trafficking is a matter of trial.

13. Perusal of the bail order dated 06.01.2026 passed by this Court indicates that the fact of the Applicant’s incarceration for more than 1 year and 4 months has weighed with the learned Single Judge. In the said order, it is clearly mentioned that to show the involvement of the Applicant in the crime, evidence is required. Therefore, the bail order relied upon by the Applicant cannot be said to be helping the Applicant for discharge.

14. Viewed in the light of what is observed above, when the impugned order is perused, it is seen that the money transfer between Applicant and Accused Nos. 9 and 10 is considered by the Additional Sessions Judge. The learned Judge has held that absence of recovery or possession of the contraband cannot be ground to discharge because the charge against Applicant is financing of illicit drug trafficking. The learned Trial Judge has held that whether the transactions between

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

Applicant and co-accused Nos. 9 and 10 were purely business transactions or it was financing by the Applicant, will be decided only after leading evidence. The learned Trial Judge has also held that same is the case with the aspect of criminal conspiracy. It is also considered by the Additional Sessions Judge that evidence will be required to prove when GST certificate was cancelled and when it was revoked. It is also held that the case is not based only on voluntary statements under Section 67 of NDPS Act and at the stage of discharge, roving enquiry into the evidence is not permissible.

15. The proposition of law laid down by the Hon'ble Supreme Court in various judgments relied upon by the Applicant cannot be disputed in principle, but it will have to be seen if the principle applies to the facts of this case.

16. In **Prafulla Kumar Samal & Anr (Supra)**, the Hon'ble Supreme Court has clarified that when the material placed before the Court discloses grave suspicion against the accused, which is not properly explained, the Court will be fully justified in framing charges and proceeding with the trial.

17. In **Asim Shariff Vs. NIA (Supra)**, the Hon'ble Supreme Court has held that at the stage of Section 227 of CrPC, the Court has undoubted power to sift and weigh the evidence for limited purpose of finding out whether or not the *prima facie* case is made out against the accused.

18. In **Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra (Supra),** Hon'ble Supreme Court has held similarly that Section 227

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02

postulates exercise of judicial mind and the Court has power to sift and weigh the material for limited purpose of finding out whether or not *prima facie* case is made out.

19. In **CBI, Hyderabad Vs. K. Narayana Rao (Supra),** same guidelines are reiterated.

20. In **Ajay Kumar Gupta Vs. Union of India (Supra),** the Supreme Court has reiterated that statement recorded under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act. Since the Respondent/NCB has taken a clear stand that the opposition is not based only on statement under Section 67 of NDPS Act, there is no need to consider this judgment any further.

21. The judgment of this Court in **Rhea Chakraborty Vs. Union of India (Supra)** relied upon by counsel for the Applicant in support of his submission that 'simply providing money for a particular transaction will not be financing of the activity' cannot be considered at this stage because the said judgment was rendered while considering application for bail and not discharge.

22. In the aforesaid facts and circumstances, and for reasons indicated above, the impugned order cannot be faulted. There is no reason to interfere.

23. **Criminal Revision Application is accordingly rejected**.

(M.M. SATHAYE, J.)

Uploaded on - 04/11/2026 Downloaded on - 04/11/2026 19:00:02