



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1627 OF 2025

Blessing Amaka Okonko

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Khushal Parmar, a/w Anjali More, for the Applicant.

Ms. Manisha R. Tidke, APP for the Respondent-State.

CORAM

DR. NEELA GOKHALE, J.

RESERVED ON:

01ST DECEMBER 2025

PRONOUNCED ON:

03RD DECEMBER 2025

JUDGMENT:-

1. By this Application, the Applicant seeks her enlargement on bail in connection with FIR No. 01 of 2023 dated 01st January 2023 registered with the ANC, Ghatkopar Unit, Mumbai, for the offences punishable under Sections 8(c), 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The facts of the case, in brief, are as under:-

2.1 On 31st December 2022, at around 1800 hours, the officials of the ANC, Ghatkopar Unit, Mumbai, received information of sale of narcotics in Mumbai City. Armed with this information, the officials formed a team and set off for patrolling. They carried with them all the necessary material required for compliances under the NDPS Act. During patrolling, they found 2 persons lurking in suspicious circumstances near the Lotus Prime Cloth Store, Navrang Compound, Mahim-Sion Link Road Bridge, Mumbai. The Police stopped their vehicle a little ahead of them, and kept a watch on the activities of those two persons. It appeared that the said two persons were waiting for someone. Finally, the Police officials started to go upto them to make inquiries.

2.2 On seeing the Police, the said two persons scrambled to disperse. The Police caught up with them and began making inquiries. The persons gave evasive answers. Finding their behaviour suspicious, the Police proceeded to call two panchas. Thereupon, after complying with the requisites of

the NDPS Act, they undertook a search of the said persons. 40 grams of Mephedrone ('MD') was recovered from the person of one of them namely, Nitin Chandrakant Adsul @ Papya. It was stored in a zip lock plastic pouch. Some cash was also recovered from him. Further, 110 grams of MD along with some cash were recovered from the other person namely, Reddy Mallesh Shadkinur @ Raju. The same was also stored in a zip lock plastic pouch.

2.3 Papya and Raju were brought to the Police Station and were arrested. Panchanamas were recorded and other formalities of the provisions of the NDPS Act were complied. On interrogation, Raju informed the Police that one lady namely, Blessing Okonko supplied 150 grams of MD to him out of which he had sold 40 grams to Papya. This lady is the Applicant herein.

2.4 At 4:55 am of 1st January 2023, the officials of the ANC, Ghatkopar Unit, Mumbai set off on patrolling duty to look for the Applicant at the location revealed by Raju. Raju

accompanied the officials. The officials reached the location at about 6.30 am and laid a trap. The Applicant came near the location at around 7.15 am. She was pointed out to the Police by Raju. The Police stopped the Applicant and made inquiries regarding her identity. She gave evasive answers. She was also searched after following due process of law. A plastic zip lock pouch containing 460 grams of MD was recovered from the pocket of her jacket. Accordingly, the Applicant was also arrested on 1st January 2023.

3. The Applicant filed an application seeking bail in the Special Court for NDPS at Greater Bombay, however, by order dated 17th March 2025, the bail application was rejected. Hence, the Applicant is before this Court seeking reliefs as prayed.

4. Mr. Khushal Parmar, learned counsel appeared for the Applicant. He submitted that the Police have not complied with the provisions of Section 42 of the NDPS Act; there was no CDR, bank transactions or any WhatsApp chats of the

Applicant with the co-accused; there is non-compliance of Section 50 of the NDPS Act as the personal search of the Applicant was taken by a Senior Police Inspector along with a lady police Sepoy and a lady panch. He submitted that they are not authorized to search an accused. He also submitted that the panchas failed to sign the letter under Section 50 of the NDPS Act although they have signed the notice under Section 50 of the NDPS Act. Mr. Parmar further submitted that the Applicant is in custody for more than 2 years, however, the trial has not concluded as yet. He thus, prays that the Applicant be released on bail. He placed reliance of a decision of Supreme Court in *Sarija Banu (A) Janarthani @Janani and Anr. v. State through Inspector of Police*¹, and in the matter of *Aarif Akram Singh Shaikh v. State of Maharashtra*².

5. Ms. Manisha Tidke, learned APP representing the State in the matter, submitted that all the compliances under

1 (2004) 12 SCC 266

2 2023: BHC - AS 5149

the NDPS Act are made. She pointed to the detailed panchanamas on record. She also drew my attention to the letter addressed to the Senior Police Officer by the Officer-in-Charge of the ANC, Smt. Lata Sutar, conveying to him the details of the information received and reduced into writing. The said letter is signed by Smt. Lata Sutar. Thus, she submitted that Section 42 of the NDPS Act is complied with. She thereafter pointed to the letter addressed to the Applicant, apprising of her rights under Section 50 of the NDPS Act, to which the Applicant consented. Ms. Tidke, thus submitted that compliance under Section 50 of the NDPS Act is also complete. Personal search of the Applicant was taken by an authorized officer. She further submitted that the Applicant is residing in India unauthorizedly as her visa has already expired. She also submitted that the charges are framed and the trial is soon to commence. There is no long incarceration, hence, the Bail Application be rejected.

6. Heard learned counsel appearing for the parties and perused the record with their assistance.

7. The essential objections of Mr. Parmar are that of non-compliance of Section 42 and Section 50 of the NDPS Act. As far as Section 42 is concerned, I have gone through the letter reducing the information received from the co-accused in writing and forwarded to the Senior Officer. The entire sequence of events took place in continuation of the arrest of the co-accused. There was no specific intelligence regarding the co-accused. The generic intelligence was regarding narcotic trade being plied in Mumbai City. The officials thus, set out on patrolling duty and nabbed co-accused Raju and Papya. There is a panchanama recorded, detailing the events of the intervening night of 31st December 2022 and 1st January 2023. The arrest of the co-accused followed by the Applicant's arrest is reduced into writing and forwarded to Senior Officer. The extract of the Station Diary also shows an entry recorded at 04:30 a.m. of 1st January,

2023, regarding the information given by Raju. There is compliance of Section 42 of the Act and the objection of Mr. Parmar regarding non-compliance of Section 42 of the NDPS Act is not sustainable.

8. I have perused the decision of the Supreme Court in *Sarija Banu (Supra)*, which observes, it is necessary for the Court to consider alleged violation under Section 42 of the Act at the stage of bail. I have considered the objection raised by Mr. Parmar in this regard. I have found that Section 42 of the Act is complied with. Hence, the observations in the said decision does not apply to the facts of the present matter. Similarly, the facts in the decision of *Aarif (Supra)* are distinct from the present case and hence, inapplicable.

9. As regards, objection of non compliance of Section 50 is concerned, there is a letter apprising the Applicant regarding her rights, to which the Applicant has penned the following words, signifying her willingness to be searched by

the Police and waiving her right to be searched by the Magistrate/Gazetted Officer:

" I am aware about my rights. Police can take my personal search. I have no objection."

The Applicant has signed and dated the said letter. The only lapse is that the Panch have not signed the said letter. According to Mr. Parmar, this lapse is sufficient to record satisfaction that the Applicant has not committed the said offence. In my view, Section 50 of the Act does not require the Panchas to countersign the letter under Section 50 of the Act. The said lapse is thus not sufficient to record a reasonable belief that the Applicant has not committed the offence.

10. The Applicant's personal search was conducted by PI - Sutar, who is a Gazetted Officer herself in the presence of the lady panch and another lady police officer namely Ms. Korpe in a secluded place. Thus, there is no contravention of the provisions of Section 50 of the Act.

11. The Applicant is also residing illegally in India as her visa stands expired as on date. Hence, it is likely that the Applicant may not remain present to attend the trial and her presence will be difficult to secure. The quantity of contraband recovered from the pocket of the Applicant's jacket is 460 grams of MD, which is a commercial quantity.

12. The conditions imposed in Section 37 (1) of the Act is that the Public Prosecutor ought to be given an opportunity to oppose the bail Application; if opposed by the Public Prosecutor, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and additionally must be satisfied that the accused persons is unlikely to commit any offence while on bail.

13. As observed by the Apex Court in *Collector of Customs, New Delhi v. Ahmadalieva Nodira*³, 'reasonable grounds' means something more than *prima facie* grounds. It

3 (2004) 3 SCC 549

contemplates substantial probable causes for believing that the accused is not guilty of the offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

(emphasis supplied)

14. Thus, the focus is on the availability of reasonable grounds to believe that the accused is not guilty of the offence as charged. In the facts of the present case, the Applicant was not only apprehended with a large quantity of MD i.e. 460 grams, but also, she was supplying for sale, the said substance to dealers, including Raju and Papya. In view of the magnitude of the offence, the wider societal implications of releasing the Applicant from whose possession commercial quantity of narcotic is recovered, the possibility of the Applicant returning to the same network and re-offending, and the difficulty in securing the presence of the Applicant to

face the trial, I am not inclined to release the Applicant on bail.

15. Mr. Parmar's objection on various alleged infirmities in the prosecution case including alleged procedural lapses, discrepancies in Pancha's signatures on Section 50 letter etc., relate to evaluation of evidence, which matters can be properly appreciated by the Trial Court. The Constitutional Court is not required to decide the question of guilt or innocence of the Applicant at the bail stage and the scope of consideration is limited.

16. Moreover, this Court is of the view that as the Applicant is charged with offences punishable with 10 to 20 years rigorous imprisonment, it cannot be said that the Applicant has been incarcerated for an unreasonably long time. Furthermore, since this Court is of the *prima facie* opinion that the Applicant is involved in drug trafficking, no case is made out for dispensing with the mandatory requirement of Section 37 of the NDPS Act. In any case, in the

facts and circumstances of this case, I am unable to record a finding that there is reasonable ground to believe that the Applicant has not committed the said offence.

17. The Bail Application is thus, rejected.

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

(DR. NEELA GOKHALE, J)