

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4911 OF 2024**

Shakir Jamil Ahmed Shaikh ... Applicant

V/s.

The State of Maharashtra ...Respondent

Ms. Sumaiya Khan a/w. Ms. Deepa Amati i/b. Adv. Munira
Palanpurwala for the Applicant.

Mr. V.A. Kulkarni, APP for the Respondent – State.

Mr. Balaji Mahagavkar, PSI, RAK Marg Police Station, present.

CORAM: SHYAM C. CHANDAK, J.

DATED : 8th JULY, 2026

P.C. :-

1. Present Application seeking release of the Applicant on bail in C.R.No.78/2023 registered with RAK Marg Police Station, Mumbai for the offence punishable under Sections 8(c) with 22(b) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”), on the report dated 26/02/2023 filed by Mr. Anil Kolekar.

2. Heard Ms. Khan, learned Counsel for the Applicant and Mr. V.A. Kulkarni, learned APP for the Respondent – State.

3. The prosecution case is that on 26/02/2023 at about 01:30 hours, while the RAK Marg Police were patrolling in the jurisdictional area near Darbar Hotel, the Applicant was present there. His conduct was suspicious. Therefore, he was accosted and in the presence of two panchas, his personal search was conducted. The Applicant was found in possession of 100 grams of Mephedrone which was seized and sealed. A detailed panchanama was recorded of the said action. Thereafter, the informant filed a

complaint leading to registration of aforesaid crime and arrest of the Applicant. Investigation culminated into filing of charge-sheet. The trial Court declined to released the Applicant on bail.

4. Ms. Khan submitted that there is non-compliance of Section 50 of the NDPS Act before taking search of the Applicant. The Applicant is behind bars for last three and half years. Although charge has been framed, no witness has been examined till date. The Applicant has two criminal antecedents, therein, he is on bail. Therefore, the Applicant is entitled to be released on bail.

5. Mr. Kulkarni, learned APP opposed the Application contending that before taking personal search of the Applicant, notice required under Section 50 of NDPS Act was served upon him. When the Applicant gave his oral no-objection, his personal search was conducted by the police. Further, commercial quantity of Mephedrone was found in possession of the Applicant, which he has not explained. The Applicant has two criminal antecedents of possessing intermediate quantity of Mephedrone. Therefore, and considering the rigours of Section 37 of NDPS Act, bail be refused.

6. I have considered these submissions. There is no dispute that, before taking personal search of the Applicant, he was served with the written notice under Section 50 of NDPS Act. Thereby, the Applicant was informed that, "He has right of being searched in the presence of a Magistrate or a Gazetted Officer. If he so desire, then we can make such an arrangement". However, as recorded in the Panchnama, the Applicant orally replied that "It is not necessary". Yet, the said waiver by the Applicant is neither recorded in the copy of the notice nor separately with signature of the Applicant thereunder.

The Hon'ble Supreme Court in ***Rajan Kumar Chadha v. State of Himachal Pradesh***, reported in 2023 INSC 878, has put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act. The Court noted that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that *"I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer."* This would lend more credence to the compliance of Section 50 of the NDPS Act.

The aforesaid observations supports the submissions made by learned Counsel for the Applicant that the waiver as above being an essential aspect in such matters and since it is not properly recorded in this case, it supports the Applicant's case that he was not searched as required in law. The Applicant is behind bars for more than three and half years. In the earlier cases, the Applicant is on bail. As such, the Applicant deserves to be released on bail. Hence, the following Order :-

(i) The Applicant – Shakir Jamil Ahmed Shaikh be released on bail in C.R.No.78/2023 registered with RAK Marg Police Station, Mumbai for the offence punishable under Sections 8(c) with 22(b) and 22(c) of the NDPS Act, on his executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The Applicant shall mark his attendance at RAK Marg Police Station, Mumbai on 1st and 3rd Sunday of each calender month between 11:00 a.m. to 2:00 p.m. till conclusion of the trial.

(iii) The Applicant shall regularly attend the proceedings before the jurisdictional Court unless exempted by the said Court, for the reasons to be recorded in writing.

(iv) The Applicant shall not tamper with the prosecution evidence and shall not directly or indirectly influence upon the prosecution witnesses to prevent them from deposing against him.

(v) The Applicant shall not indulge in identical activities for which he has been arraigned in this case.

(vi) On being released from jail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination to the entitlement for bail and they may not be construed as an expression of opinion on

the guilt or otherwise of the Applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

7. Bail Application stands disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)

WAKLE
MANOJ
JANARDHAN

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