



P.H. JAYANI

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3695 OF 2026

Jaibun Mohammed Shaikh ... Applicant
V/S.
State of Maharashtra ... Respondent

Mr. Taraq Sayed a/w. Ms. Ashwini Acharii and Mr. Devashish Dhanjode for the Applicant.
Mr. Vinod Chate, APP for the Respondent – State.
Mr. Mahesh Khankar, PSI, Bazarpeth Police Station, Kalyan, present.

CORAM: SHYAM C. CHANDAK, J.
DATED : 28th SEPTEMBER, 2026

P.C. :-

1. Heard learned Counsel for the parties. Perused the record.
2. The applicant seeks her release on bail in connection with C.R.No.526/2025 registered with Bazarpeth Police Station, Thane for the offence punishable under Sections 8(c), 21(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS”) on the report dated 25.09.2025 lodged by Mr. Khushal Tukaram Nerkar, Police Constable, Dombivali Police Station.
3. The prosecution case is that, on 25.09.2025, at about 17:12 hours, while the informant and other police personnel with him were patrolling in *Bail Bazar* area, Kalyan, accused Mohammed Havaladar Shaikh (A1) and the applicant, Jaibun Mohammed Sheikh (A2) were found present there. Their conduct appeared suspicious, and they tried to run away on seeing the police. Therefore, they were accosted, two panchas were called and both the accused were served with the notice u/S. 50 of NDPS Act.

During personal search of A1, a plastic bag was found in pocket of his pant. It was found containing 111 grams of heroin. Similar plastic bag was found in the purse carried by the applicant and it was found containing 57 grams of MD. The said substance were seized under a panchanama. Accordingly, present crime came to be registered and the applicant was arrested. However, the other accused wanted in the crime could not be arrested. On completion of the investigation, charge-sheet came to be filed. The trial Court refused to release the applicant on bail.

4. Mr. Sayed, learned Counsel for the applicant submitted that Section 50 (4) of the NDPS Act has been ignored in this case while conducting the personal search of the applicant as well as the purse in her possession because said search was conducted at the the instance of a male police officer, but, in his presence and gaze. A male panch and other male police official were also present there at the time of the said search. Additionally, he pointed that the contraband was weighed along with the plastic packet in which it was kept. Consequently, it is possible that the actual contraband was lesser than the commercial quantity, i.e., 50 grams. He, therefore, urged to grant bail.

5. Opposing these submissions, Mr. Chate, the learned APP submitted that there is nothing on record to doubt the search and seizure action undertaken in this case at the spot by the police. He submitted that although, the applicant was searched in the presence and gaze of a male police officer and a male panch, on that technical ground, it cannot be maintained that Section 50 (4) of the NDPS Act is violated. He submitted that it all depends on the size of the pouch in which the contraband was kept. Therefore,

whether the contraband was less than the commercial quantity or not, is a question of trial and at this stage, it cannot be denied that the applicant was found in possession of the commercial quantity of contraband. In this background, bail may be refused.

6. I have considered these submission. A bare perusal of the spot panchanama evinces that the personal search of the applicant and her purse was conducted by a female police head constable namely R.J. Ghuge in the presence and gaze of the male panch and male police officer Mr. Dukale, Police Inspector. It is not the case that the said search and seizure was conducted in seclusion. Therefore, it was in violation of Section 50(4) of NDPS Act.

7. This conclusion is supported by the judgment of the Division Bench of this Court in **Mrs. Veneela Tilak v. Shri Shahasane, Assistant Collector of Customs** reported in **1997 All MR (Cri) 368** which is followed by the judgment of learned Single Judge in **Heena Bharat Shah vs. State of Maharashtra** reported in **2017 SCC OnLine Bom 1396**. In the subsequent judgment, in paragraph 4, it is observed that :-

“ 4. In the present case the applicant Heena Shah, a female was searched, that is her person was searched within the gaze of males. Prima-facie, it appears that the applicant Heena Shah was not searched in seclusion and in the absence of any male person. That there is a contravention of section 50(4) of NDPS Act, 1985 and the provisions in it spirit have been violated as has been laid down by the Division Bench of this Court in the case of *Mrs. Veenela Tilak (supra)*. The provision envisages regard for the person and privacy of a female and the same is not honoured by the

mere fact of the search being carried out by a female constable. Section 50(4) of NDPS Act additionally requires that the female accused be searched in seclusion and to the exclusion of males. It is, therefore, reasonable to believe that the applicant has not committed an offence punishable with imprisonment for more than five years as contemplated under the provisions of NDPS Act, 1985. It further prima-facie appears that there is no reasonable belief that she is likely to commit an offence punishable under the NDPS Act if released on bail. ”

8. The aforesaid decisions were considered by the learned Single Judge of this Court in BA/260/2024. In addition, reference was made of the decision of the Hon’ble Supreme Court in **State of Punjab vs. Surinder Rani alias Chhindi** reported in (2000) 10 SCC 429, therein, it is laid down that requirement of Section 50(4) is mandatory and cannot be diluted even on the ground that a female was not available at the time of search.

9. In the wake of above, there is no escape from a prima facie conclusion that the search and seizure of the contraband from the applicant is vitiated on the count that it was conducted in the presence and gaze of a male police officer Mr. Dukale as well as a male panch. This situation permits an inference by the Court that the applicant may not be guilty of the aforesaid offences alleged against her. It is stated that the applicant has no criminal antecedents. As a result, the rigours of Section 37 of NDPS Act are not attracted.

10. In the backdrop, the applicant is entitled for bail. Hence, Order :-

- (i) The applicant - Jaibun Mohammed Shaikh be released on bail in C.R.No.526/2025 registered with Bazarpeth Police Station, Thane, on her executing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (ii) The applicant shall mark her attendance at Bazarpeth Police Station, Thane once in two months 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.
- (iv) The applicant shall not indulge in identical activities for which she has been arraigned in this case.
- (v) The applicant shall not tamper with the prosecution evidence and shall not directly or indirectly influence the prosecution witnesses to prevent them from deposing against her.
- (vi) On being released from jail, the applicant shall furnish her contact number and residential address to the Investigating Officer and shall keep him updated in case there is any change.
- (vii) It is clarified that any observation made in the present Order are for the purpose of deciding the present Bail Application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

11. Bail Application stands disposed of in aforesaid terms.

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(SHYAM C. CHANDAK, J.)