

MHAK010013822025



SPECIAL CASE (NDPS) NO.75/2025.

(AADIL MOHD. SHAMIM ANSARI & OTHERS)

APPLICANT : MOHD. IRFAN MOHD. YUSUF



ORDER BELOW EX.29.

(Dated : 06.12.2025)

Applicant Mohd. Irfan Mohd. Yusuf has sought bail under S.483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with crime No.532/2024 registered with Barshitakli police station, Tq. Barshitakli, Dist. Akola for the offence punishable under S.8 (c), 22 (c), 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and S.318 (4), 336 (3) and 338 of Bharatiya Nyaya Sanhita, 2023.

2) Brief facts of the prosecution case are as under ;

On 24.10.2024, informant PI Shankar Shelke, LCB, Akola lodged FIR. On 23.10.2024, he alongwith other police staff was on patrol duty within limits of Barshitakli police station. At about 18:00 hours, he received secret information that psychotropic substance Mephedrone (MD) was manufactured in the premises of defunct ginning mill of Mohd. Shafi situated on Barshitakli - Mahagaon road. The information was that said drug was manufactured for purpose of sale. Informant immediately intimated to Superintendent of Police, Akola. Thereafter, he sent written intimation to SP, Akola through police constable and took entry in station diary of Barshitakli police station.

3) When informant received permission from SP, Akola to conduct raid, he called for two panchas and Gazetted Officer. He called photographer with camera and video camera. He called a person with electronic weighing scale. After making necessary preparation, the informant with raiding party and other personnel went to the ginning mill. When they entered in the premises of the mill, they found one TATA Zest

white coloured car bearing registration No. MH-47-N-6379 in which one person was loading something and two persons were present in the nearby room. Two big ovens were kept in front of the room. Police found accused (1) Pavan Muddanar, (2) Adil Mohd. Shamim Ansari, (3) Firoz Khan Shabbir Khan, (4) Nisar Niyazi Mukhtar Niyazi and (5) Mohd. Irfan Mohd. Yousuf on the spot. Raiding party introduced themselves. The accused persons disclosed that Ephedrine was being manufactured from various chemicals and articles kept in the premises. After following usual procedure, raid was conducted.

4) The police found substantial muddemal articles in the premises as below :

- (a) Ephedrine powder contained in 22 plastic packets, total 5548 gms. worth Rs.1,38,70,000/-;
- (b) 133 Kgs. Soda ash;
- (c) 410 Ltrs. Acetone;
- (d) 60 Ltrs. Chloroform;
- (e) 40 Ltrs. Methamphetamine (M.M.);
- (f) 140 Ltrs. Prepolphinol (P.P.);
- (g) Various articles like tubs, heating instruments, tripod, weighing glasses, porcelain mug, two hot air ovens used to dry Ephedrine, generator, glass mugs, water pump, weighing scale and other articles used to manufacture Ephedrine.

5) After taking samples and following usual procedure, police seized the muddemal articles. Tata Zest car was also seized. Total worth of seized muddemal is Rs.2,38,70,000/-. After completion of the procedure, FIR was registered. Applicant is arrested on 24.10.2024 and since then, he is in custody.

6) State has opposed bail application on various grounds.

7) Learned advocate Shri M. B. Sharma for the applicant has submitted that case appears doubtful as the Police Inspector went himself with preparation. No proper entry of information was made. Copy of information was not submitted to superior officer. Even General Diary entry contains name which is different from name of the Mill owner mentioned in panchanama. It is not clear how LCB, Akola assumed investigation. Information is not pertaining to MD. There is joint notice to three accused issued under S.50 of the Act. Notice under S.50 of the Act was not issued to present applicant. He was not arrested on the spot but he was called lateron. Panchanama does not show the names of persons who were loading muddemal in the car. No search warrant was obtained from the court. In fact, raid is false. So the informant himself became Investigating Officer.

8) As per the prosecution case, no powder was seized as the photographs show that muddemal is in the form of bars. None of the photographs in inventory panchanama shows actual muddemal. It is contended that mobile of accused Adil was seized on the spot. However, mobile inspection panchanama shows chats going on lateron. Contents of various packets were mixed and then samples were taken. So there is violation of S.52-A of the Act. It is not clear why Ld. Judicial Magistrate First Class took two samples. When samples were already taken by LCB, there was no need for taking further samples as it was not called for. Inventory certificate is issued mechanically. Initially, State came up with a case of Ephedrine. It is contended that chemical analysis proved that seized contraband is Mephedrone (MD). State does not file application for cancellation of bail of co-accused Jatin. Investigation is faulty. For these reasons, accused cannot be put behind bars. He has relied on many citations which are discussed below.

9) Learned Spl. P.P. Shri R. M. Akotkar has submitted that the offence is serious in nature. Most of the arguments relating to faulty

investigation are part and parcel of the trial. Without leading evidence, it is not possible to say that investigation is faulty. At this juncture, it cannot be said that Investigating Officer forged documents as per his convenience. Large quantity of contraband was seized. Considering this aspect, it is not the fit case to grant bail to the accused.

10) In FIR, large number of chemicals and other articles alongwith 5.548 Kgs. Ephedrine powder were seized on the spot. Value of seized Ephedrine is around 1.38 Crores. Ephedrine is controlled substance. Raiding officer received information that manufacturing of Mephedrone was going on. Samples from the seized substance were taken and sent for chemical analysis. The report of chemical analysis returned with finding that seized substance is Mephedrone (MD). Initial information received was of manufacturing MD. However, five accused who were found on the spot, tried to misled the raiding party by stating that manufacturing of Ephedrine was going on. Chemical Analysis of seized substance prima facie proved that information received was correct.

11) It is needless to say that Mephedrone is much more valuable and it is pertinent to note that commercial quantity of Mephedrone is only 50 gms. whereas Ephedrine is not covered as narcotic drug or psychotropic substance & the term “commercial quantity” is not applicable to it. Seized Mephedrone is 5.548 Kgs. & it is more than 100 times that of commercial quantity. Needless to say that seized contraband has its worth in Crores of rupees.

12) Shri Sharma has submitted that no powder was seized. Photographs of seizure show that muddemal in the form of bars was seized. He has referred photographs at page no.46 onwards in the charge sheet. Those photographs appear to be drawn at the time of conducting raid. From the photographs, contraband was being weighed on weighing scale, it was

contained in various plastic bags. It does not appear that it was in the form of bars. At the most it can be said that some contraband was in powder form and some was in the form of lumps. In some carry bags, some lumps and powder was seen. It is a common phenomena that lumps are formed when any substance is weighed and with gradual drying lumps may turn into powder. So inventory certificate or the case of powder putforth by prosecution cannot be termed as false case on this ground.

13) It appears that contraband powder was found in two variants. One is white powder and the other is brownish / blackish white powder. White powder was packed in 13 plastic bags / packets. Inventory certificate shows that first carry bag contained in box was removed open. It contained 13 transparent carry bags having white coloured substance in powder form. Second carry bag was open in similar fashion. It contained 9 transparent carry bags containing brownish colour 6 packets and blackish white coloured 3 packets containing white and brown coloured powder. From the photographs taken on the spot, it clearly appears that the contraband was found there in two different forms as described above. The raiding party for the sake of convenience weighed and packed different two variants in 13 and 9 plastic packets respectively. Muddemal was kept separately in two different carry bags and it was opened at the time of inventory panchanama. Two different variants were mixed separately and after making the mixture homogeneous samples were drawn. It is not the case that muddemal contraband was found in different packets or containers and samples were taking after mixing it. Contraband found in two different colour tones was packed in various packets for the sake of convenience. Therefore, the seized contraband was found in two variants as far as colour appearance goes and it was packed separately and samples were drawn from each variant. It is not the case that contraband kept in separate pouch was seized and after mixing samples were drawn which could have been called as breach of

standing orders or S.52-A of NDPS Act.

14) Regarding breach of S.52-A of the Act or standing orders regarding taking samples, Shri Sharma has relied on number of citations. It is his submission that samples were taken in contravention of the provisions and as such, entire sampling procedure was faulty. He has relied on following citations.

(i) **Kiran Machhindra Kale Vs. The Senior Inspector fo Police & Anr.**¹.

(ii) **Wali Hassan Vs. State of U.P.**².

(iii) **Vimal Rajput Vs. State of U.P. Through Additional Chief Secretary, Home**³.

(iv) **Aniodo Tochukwu Vs. The State of Maharashtra, Bail Application No.4148/2023, D/o. 18.4.2024.**

(v) **Tareena Vs. State NCT of Delhi, Bail Application No.314/2024, D/o. 28.2.2024.**

(vi) **Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra, Bail Application No.1296/2022, D/o. 17.3.2023.**

(vii) **Chand Riyaz Shaikh Riyaz Shaikh Vs. The Union of India & Anr., Bail Application No.3269/2022, D/o. 13.7.2023.**

(viii) **Laxman Thakur Vs. State (Govt. of NCT of Delhi), Bail Application No.3233/2022, D/o. 14.12.2022.**

(ix) **Amina Vs. State NCT of Delhi, Bail Application No.3805/2022, D/o. 2.6.2023.**

15) As I have already discussed, it is not the case that contraband was found in different packets and it was mixed before drawing samples. This aspect has been already discussed in forgoing paragraphs. Apart from that, there are distinguishing features in some citations. In **Tareena**'s case,

1 2025 ALL MR (Cri) 95.

2 2022 (2) Crimes 526 (All.).

3 2024 (4) Crimes 372 (All.).

Hon'ble Delhi High Court granted bail after considering evidence of witnesses examined in the case. So violation or defect in sampling process was assessed on the basis of evidence recorded by Ld. trial court. In **Ibrahim Khawaja's** case, Hon'ble Bombay High Court considered that contraband seized was 21 Kg. ganja and it was doubtful that contraband was of commercial quantity. In **Aniodo's** case, Hon'ble Bombay High Court dealt with MD powder but seized quantity was 55 gms. only which marginally exceeds the commercial quantity of MD. Hon'ble High Court observed that aspect of mixture of the contents of different pouches assumes significance in view of the seized quantity. In case at hand, seized MD is above 5.5 Kgs. Thus, accused cannot take benefit of the observations made in all aforesaid citations in facts and circumstances of the case which are very different.

16) Shri Sharma has submitted that samples were drawn on the spot and sent for Chemical Analysis. Again samples were drawn at the time of inventory panchanama. Retesting of samples is permissible only in rare cases. For this purpose, he has relied on the judgment of Hon'ble Supreme Court in **Thana Singh Vs. Central Bureau of Narcotics**⁴. He has also submitted that Ld. JMFC issued certificate of inventory without application of mind. He has relied on the judgment of Hon'ble Bombay High Court in **Prem Singh Dhondu Chavan Vs. State of Maharashtra**⁵. Hon'ble Bombay High Court dealt with appeal against conviction wherein contraband was 4.5 Kg. ganja. In case at hand, substance involved in MD and that is way above the commercial quantity. At this juncture, it is very difficult to consider that Ld. JMFC, Barshitakli issued inventory certificate mechanically. Certificate contains the procedure carried at the time of inventory. Photographs of various procedures carried at the time of

4 2013 Cri. L.J. 1262.

5 2013 ALL MR (Cri) 3764.

inventory are attached to inventory certificate. Inventory certificate shows opening of carry bags and weighing packets differently and thereafter, taking out samples in details. Hence, it is difficult to say that inventory certificate was issued mechanically. I have already discussed that material on record shows that powder form was seized from the spot and inventory certificate shows the same.

17) Shri Sharma has submitted that accused was not arrested on the spot and he was called lateron. To support this submission, he has further submitted that in spot panchanama names of the persons who were loading muddemal in the car are not mentioned. Secondly no notice under S.50 of the Act was issued to present accused Irfan. He has submitted that joint notice was issued to three accused only. Joint notice was issued to Aadil Mohd. Ansari, Pavan Muddanar and Firoz Khan. FIR shows that besides these three accused, present applicant Irfan and co-accused Nisar Niyazi were also found on the spot. Regarding issuance of joint notice, Shri Sharma has relied on **Rajpal Vs. State of Haryana**⁶. In any case notice under S.50 of the Act was not issued to present accused Irfan. So issue of joint notice is not applicable to him. To properly assess the situation, one has to consider the nature of offence and allegations made in FIR. A manufacturing facility for production and consequent sale of Mephedrone was established in a defunct ginning mill. Obviously it is a large premises and activities were going on inside the premises of ginning mill having wall compound. One Tata Zest car was found in front of one constructed room in which some cartoons were being loaded. Two big ovens were kept in front of the room. As per prosecution case, accused Aadil Ansari, Pavan Muddanar are residents of Vasai, Dist. Thane. They came to Akola for production of Mephedrone. Few accused at Mumbai arranged for sending raw material and equipments required to produce MD. Accused Nisar

Niyazi and present accused Irfan who were present on the spot had different roles in the offence. So it seems that notice was issued to three accused who were directly found in the control of manufacturing material and loading material in the car. When large scale production of sensitive contraband like MD was going on, it is obvious that many persons are involved in the process right from arranging raw material and equipments to distributing / selling the contraband in market through suitable persons. Even if submission of Shri Sharma is accepted for a moment for the sake of arguments, role of an accused in a cartel cannot be assessed on the basis of presence on the spot only. In this case, FIR clearly spells out presence of five accused persons on the spot by their names including accused Irfan.

18) Shri Sharma has made strenuous submission about non compliance of S.42 of the Act. He has submitted that mere entry in station diary is not compliance under S.42 of the Act. He has further submitted that no search warrant or authorization was obtained though court was not far away from the spot. According to him, copy of information was not sent to superior officer. For this purpose, he has relied on following citations of Hon'ble Bombay High Court.

- (i) **Raju Bhavlal Pawar & Ors. Vs. The State of Maharashtra**⁷.
- (ii) **Gurmeet Singh Vs. Davinder Singh & Anr.**⁸.
- (iii) **Pornima Milind Bansode Vs. State of Maharashtra**⁹.
- (iv) **State of Rajasthan Vs. Jag Raj Singh alias Hansa**¹⁰.

In Jag Raj Singh's case, Hon'ble Supreme Court dealt with the appeal against acquittal. Thus, it was decided in totality of circumstances since entire evidence was before the Hon'ble Court.

⁷ 2021 ALL MR (Cri) 4651

⁸ 2021 ALL MR (Cri) 4405.

⁹ 2013 ALL MR (Cri) 4256.

¹⁰ 2016 Cri. L.J. 3336.

19) Shri Sharma has submitted that in general diary entry, name of factory owner is mentioned as Sheku Sheth where as name in panchanama is different. When information was received by the police, it could be by the name by which the factory owner was known in the locality. However at the time of panchanama some of the accused were present and on the basis of information obtained from him, name of factory premises owner must have been mentioned. At that time, investigation was going on and as such, proper name of the factory owner would be mentioned and not the name by which he is popularly known. So this cannot be a material discrepancy. Furthermore, without recording evidence of the informant, it is not possible to hold that he did not sent copy of information or sent different information than what he received to the superior officer. At this juncture, it is a case that the informant made entry of the information in general diary of police station. Informant who was attached to Local Crime Branch, Akola received information during patrol and he made entry to the nearest possible police station i.e. Barshitakli police station. So it was taken in the general diary of said police station. He sought permission from superior officer and proceeded to conduct the raid. All entries regarding seeking panch witnesses, their presence, calling weighing scale with owner, photographer and Gazetted Officer were taken in general diary of Barshitakli police station.

20) Shri Sharma has submitted about informant and Investigating Officer being the same. According to him, it certainly creates doubt about the fair investigation which is basis of fair trial. To support his submissions, he has relied on following citations.

(i) **Mohan Lal Vs. The State of Punjab¹¹.**

(ii) **Mir Fazal Ali Farhan Vs. Union of India¹².**

11 2018 ALL SCR (Cri) 1321.

12 AIR Online 2020 Bom. 218.

21) Judgment of Hon'ble Supreme Court in **Mohan Lal**'s case is followed in many judgments. Even in Mir Fazal's case, this judgment is discussed. In Mohan Lal's case, judgment and order of conviction was challenged before Hon'ble Supreme Court. So entire evidence was before it. After considering evidence on record, it can be found whether investigation was fair or not. After recording of evidence of the Investigating Officer, it is possible to consider in what circumstances informant carried investigation of the matter. Then only it can be assessed whether investigation was proper or not. Shri Sharma has also submitted that LCB, Akola assumed investigation though it should have been carried by Barshitakli police station. This aspect also can be properly consider after recording of evidence. It cannot be said that LCB, Akola is the agency which could not have investigated such type of offence. Had there been a case that an officer holding rank not empowered to conduct an investigation in particular offence conducted such investigation, it would be a different case e.g. Police Sub-Inspector conducting investigation in Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act offence. But it is not the case in present matter.

22) As I have already mentioned persons residing at various places played different roles in production of large quantity of MD. Present accused Irfan is the friend of co-accused Nisar Niyazi who was making arrangements for production of MD. Irfan helped him and played his role. He coordinated amongst the accused persons. Niyaz and Irfan are the local persons who helped the accused persons coming from outside in getting the premises on rent from co-accused Mohd. Shafi. He provided help to co-accused for collecting various articles and making arrangements for the accused persons coming from outside. He used to keep vigil on the spot and provided help to various accused persons. Thus he played active role in the entire offence. He helped accused Nisar who make arrangements for taking

delivery of raw material sent from Mumbai, then sending the same to the site for production of MD. The fact that all the accused present on the spot told that they were producing Ephedrine though in fact production of MD was going on, clearly shows that the accused were well aware about the contraband drug. They were aware that Ephedrine is controlled substance and it would certainly decrease the rigor of the matter and they could avoid severe consequences, if possible.

23) Hon'ble Bombay High Court granted bail to co-accused Jatin Doshi. At that time, case of Ephedrine was put up before Hon'ble High Court. Shri Sharma has submitted that the State has not challenged the bail order after the substance was disclosed as MD. However, the State challenged bail order before Hon'ble Supreme Court in Criminal Appeal No.4614/2025 (arising out of SLP (Criminal) No.11043 of 2025. Recently by order dated 27.10.2025, cancelled the bail order of co-accused Jatin Doshi and directed to surrender before the trial court. Hon'ble Supreme Court considered that the accused did not deserve bail in a serious offence under the NDPS Act merely after custody of 56 days. The order shows that Hon'ble Supreme Court considered the material collected in charge sheet. On this backdrop, it is difficult to accept that present applicant Irfan who was found on the spot can claim bail in the case. Furthermore recently on 4.12.2025, Investigating Officer has sought production warrant of one of the absconding accused namely Mohd. Ashraf. He was arrested by DRI and presently in custody at Bhopal (M.P.) in connection with NDPS offence. When the Investigating Officer gets custody of co-accused and carries further interrogation, some new material may come on record showing further involvement of present accused as well as other co-accused.

24) As I have already discussed, contraband MD seized is of commercial quantity. Bar under S.37 of the NDPS Act is applicable. State

Spl. Case (NDPS) No.75/2025 (O.Ex.29)

has opposed bail application. There is prima-facie material showing involvement of the accused in alleged offence. Considering all aforesaid aspects, this is not fit case to grant bail to the accused. Hence, following order.

ORDER

Application is rejected.

Date:- 06.12.2025.

[A. D. Kshirsagar]
Special Judge, NDPS, Akola.

NV Khokale (Stenographer)
Uploaded on 06.12.2025.