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Special Case No.757/2026

MHPU380026532026



(The structured frame work as per directions of Hon'ble Supreme Court  
in Criminal Appeal No. 825/2026 )

A) **CASE DETAILS**

- |     |                                     |                                         |
|-----|-------------------------------------|-----------------------------------------|
| (a) | FIR Number and Date                 | 53/2026<br>18/01/2026                   |
| (b) | Police Station, District and State. | Shirur, Pune<br>Maharashtra             |
| (c) | Sections invoked.                   | U/s. 8(b), 22(c) and 29<br>of NDPS Act. |
| (d) | Maximum punishment prescribed.      | Twenty years.                           |

B) **CUSTODY AND PROCEDURAL COMPLIANCE.**

- |      |                                    |                  |
|------|------------------------------------|------------------|
| (i)  | Date of arrest.                    | 20/01/2026       |
| (ii) | Total period of custody undergone. | 5 months 4 days. |

C) **STATUS OF TRIAL**

- |    |                                                                                          |                     |
|----|------------------------------------------------------------------------------------------|---------------------|
| a) | Stage of proceedings (Investigation/charge-sheet/ cognizance/ framing of charges/ trial. | Charge-sheet filed. |
| b) | Total number of witnesses cited in the charge-sheet.                                     | 31                  |
| c) | Number of prosecution witnesses examined.                                                | Nil.                |

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- D) **CRIMINAL ANTECEDENTS.** Nil.
- 1) FIR No. And Police Station. Nil.
- 2) Sections Nil.
- 3) Status (pending/acquitted/ convicted). Nil.
- E) **PREVIOUS BAIL APPLICATIONS.**
- A) Court. Nil.
- B) Case No. Nil.
- C) Outcome of the cases. Nil.
- F) **COERCIVE PROCESSES.**
- a) Whether any Non-bailable warrant was issued. Nil.
- b) Whether declared a proclaimed offender. Nil.

**ORDER BELOW EXH.12**

1. Present application has been filed by **applicant /accused No.5 – Shyamsunder Vishwanath Gujar** under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, in crime registered with Shirur Police Station, Dist-Pune vide Crime No. 53/2026 for offence punishable under sections 8(c), 22(c) and 29 of the NDPS Act.

2. In short, it is the case of prosecution that on 17.01.2026 acting on the basis of secret information, informant API Kuldeep Dattatray Sankpal along with the police staff and panchas caught accused No.1 while he was proceeding on motorcycle towards Baburao Nagar by laying trap. On search of

bag on the person of accused No.1, they found Mephedrone (MD) weighing 1 kg 52 grams worth Rs.2,10,40,000/-. On inquiry from the accused No.1 about its supplier, he disclosed the name of the accused No.2. Accordingly, the accused Nos.1 and 2 came to be arrested in this crime. During further investigation it revealed that the accused No. 5/present applicant who is a police constable with Ahilyanagar Local Crime Branch had taken out aforesaid drug which was actually seized muddemal property of crime No.499/2025 registered with Shriram City Police Station and in its place filled refined wheat flour therein and gave the said drug to accused Nos. 2 to 4 and the accused No.2 gave some quantity of it to the accused No.1. During investigation, additional Mephedrone (MD) weighing 9 kg 655 grams worth Rs.19,31,00,000/- came to be seized. Accordingly, accused Nos. 3 to 5 also came to be arrested in this crime. Applicant/accused No.5 is behind bar since 21.01.2026. Accordingly, the accused No.5 has filed the present application for regular bail.

3. Investigating agency resisted the application by filing its say vide Exh.16 and prayed for rejection of the application.

4. Ld. Adv. Shri. D. A. Lodha for the applicant/accused no.5 took me through the charge-sheet and submitted that the applicant has been falsely implicated in this crime and he has no concern with it. Placing reliance on the case of **Ravi Manoj Rai V/s. Union of India and Anr. [2025] 1 HCC (Bom.)** wherein the Hon'ble Bombay High Court held that the statement of co-accused

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is not admissible and cannot be read in evidence, he submitted that merely on the basis of statement of co-accused, the name of applicant is arrayed as accused but the same is not admissible in evidence. Reliance is further placed on the case of Chandrabhan Janardhan Yadav V/s.State of Maharashtra [2025] SCC Online Bom. 462] wherein the same view is reiterated by the Hon'ble Bombay High Court. He further submitted that as per own case of prosecution, the informant had received the secret information and so, he was under statutory obligation to reduce the said information in writing and merely taking station diary entry is not compliance of section 42 of the NDPS Act. He took me through the charge-sheet and submitted that there is total non compliance of the mandatory procedure of search & seizure as contemplated under section 42 and 50 of the NDPS Act.

5. In support of his contentions, he relied on the case of Directorate of Revenue and Anr. V/s. Mohammad Nisar Holia [ 2008] 2 SCC 370] wherein the Hon'ble Supreme Court held that the officer who first receives the first information is mandatorily required to reduce it into writing and this duty cannot be delegated and its non compliance is fatal. He further relied on the case of Sarija Banu and Anr. V/s. State through Inspector of Police, [2004] 12 SCC 266], wherein the Hon'ble Supreme Court reiterated that the strict compliance with Section 42 is mandatory and must be examined carefully while considering bail application. He further relied on the case of Zakey Ahmed V/s.

State of NCT Delhi and Anr. [Bail Application No. 817/2025 decided by the Hon'ble Delhi High Court on 17.07.2025] wherein there was no compliance of mandate of Section 42 of the NDPS Act and so, the Hon'ble Delhi High Court pleased to grant bail to the applicant therein.

6. Ld. Advocate for the applicant further submitted that it is necessary for the investigation agency to comply Section 42 of the NDPS Act and cannot take the help of Section 43 of the NDPS Act. In support of his contention, he relied on the case of Boota Singh and others V/s. State of Harayana [2021] 19 SCC 606], wherein the Hon'ble Supreme Court has explained the distinction between Sections 42 and 43 of the NDPS Act and held that the total non compliance of section 42 is impermissible. He further relied on the case of State of Rajasthan V/s. Jagraj Singh @ Hansa, [2016] 11 SCC 687], wherein the Hon'ble Supreme Court has reiterated the principles laid down in State of Punjab V/s. Balbir Singh, [1994] 3 SCC 299] regarding the true interpretation of section 41(1), 42(1), 42(2) and 50 of the NDPS Act. He further took me through the seizure panchanama and the inventory drawn by the Ld. Magistrate and submitted that there are serious procedural irregularities in handling and preservation of alleged contraband. He further submitted that there is no record in Form No. 19 annexed to the charge-sheet as to the custody and movement of seized contraband. He further submitted that the seized muddemal was in the custody of concerned police

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constable from 21.01.2026 to 23.01.2026 and there is no explanation as to how the same was in the custody of said constable and it was thereafter forwarded to FSL. He further submitted that there is also serious doubt as to what came to be seized is MD drug or Alprazolam. He further submitted that the entire search and seizure procedure ought to have been videographed but no such mandatory procedural safeguard came to be followed and its benefit should be given to the accused.

7. In support of his contention, he relied on the case of Bantu Vs/. State Government NCT of Delhi, [2024] SCC Online Del. 4671] and Kalu S. K. V/s. Petitioner [2022] SCC Online Cal. 4556] wherein the Hon'ble Delhi High Court and the Hon'ble Calcutta High Court issued direction that in all cases involving recovery of narcotic substance, above commercial quantity, seizing officer shall make a video recording of entire procedure, unless for reasons beyond the control of seizing officers, they are unable to do so. He further relied on the case of Union of India V/s. Mohanlal and Anr. [2016] 3 SCC 370], wherein the Hon'ble Supreme Court has explained the procedure laid down in section 52 -A and 55 of the NDPS Act regarding handling and disposal of seized contraband and issued various directions regarding it. He further relied on the case of Abdul Kadar Shaikh V/s. Union of India, [Bail application No. 4047 of 2023 decided by the Hon'ble Bombay High Court on 07.05.2024] wherein there was prima facie discrepancy in the description of the contraband which was

allegedly seized from the applicant and sample collected therefrom and the sample which was received for analysis by the CFSL. Under such set of facts, the Hon'ble Bombay High Court pleased to grant bail to the applicant therein. He further relied on the case of **State of Rajasthan V/s.Gurumail Singh, [2005] 3 SCC 59**]. It was a case wherein the seized muddemal was kept in Malkhana on 20.05.1995 till it was taken over on 05.06.1995 but the Malkhana register was not produced and there was no sample of seal sent along with the sample to excise laboratory for comparing. Under such set of facts, the Hon'ble Supreme Court came to conclusion that the link evidence adduced by the prosecution is not satisfactory and considering the loopholes in the prosecution case, upheld the judgment of acquittal of the accused therein.

8. Ld. Advocate for the applicant further submitted that the applicant has been arrested only on the basis of whatsapp chat which is also inadmissible in evidence. In support of his contention, he relied on the case of **Chandrabhan Janardhan Yadav V/s. State of Maharashtra, [2025 SCC Online Bom. 462]** wherein the Hon'ble Bombay High Court relied on the observation of the Hon'ble Supreme Court in the case of **Bharat Chaudhary V/s. Union of India, [2021] 20 SCC 50** wherein it is held that printouts of whatsapp messages downloaded from the mobile phone or device seized cannot be treated as sufficient material to

establish link between the accused persons under the NDPS Act at the stage of bail.

9. Ld. Advocate for the applicant further took me through the arrest memo and submitted that there is no proper mention of time of arrest and how the accused No. 5 was brought from Ahilyanagar to Shirur and so, his arrest is illegal. In support of his contention, he relied on the case of Anujkumar Singh V/s. Union of India, [2026] SCC Online P & H 5458 wherein the Hon'ble Punjab and Haryana High Court has held that the period of 24 hours for producing the accused before the Magistrate begins from the time of formal arrest shown in the record and explained the meaning of word 'arrest' and also on facts held that the arrest of the petitioner therein without requisite judicial order as contained in Section 58 of the BNS and directed to release him on bail. He further submitted that if the entire charge-sheet is seen then there is no prima facie case against the applicant. He further submitted that the entire alleged muddemal has already been seized. He further submitted that there is no bar of section 37(1)(b)(a) of the NDPS Act applicable to the applicant. He further submitted that the investigation is already completed and charge-sheet has been filed and there is nothing to be recovered from the possession of applicant and so no purpose would be served in keeping him in jail. He further submitted that the applicant is sole earning member of his family. He has no criminal antecedents. He is permanent resident of given address and so there is no question of

absconding and all prosecution witnesses are police personnel or government servants and so, there is no question of pressurizing and tampering of prosecution witnesses. He is also ready to abide by any condition which may be imposed by this Court and as such prayed for releasing him on bail.

10. Ld. A.P.P. Shri. Vijay Fargade for the State took me through the charge-sheet and submitted that immediately after receipt of secret information, necessary entry came to be taken in the station diary and the raid was conducted and thereafter, the informant has lodged complaint and so there is proper compliance of Section 42(1) and (2) of the NDPS Act. He further submitted that the accused No.1 was found in possession of huge commercial quantity of MD drug worth Crores of rupees and he has disclosed the name of accused No.2 and who in turn disclosed that it is the present applicant who in collusion with remaining accused persons have supplied the same and it is the applicant who has illegally removed the muddemal of another crime and gave it to the other accused persons. He further took me through the charge-sheet and submitted that there is statement of eye witnesses who have seen the applicant changing the muddemal from the police Malkhana room and so, there is prima facie involvement of the applicant in the crime. He further took me through the arrest form and papers pertaining to it and submitted that there is proper compliance of mandatory provisions regarding arrest of accused No. 5 and well within time, he has been

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produced before the Court and there is no breach of any of the provision relating to arrest and so its benefit is not available to the applicant. He further took me through the charge-sheet and submitted that the seized muddemal property was kept in custody in sealed condition and there is proper inventory drawn by the concerned Ld. Magistrate under Section 52-A of the NDPS Act and there is proper sealing and sampling of the muddemal. He further submitted that even Alprazolam is a prohibited drug and what has been seized is more than commercial quantity and so, the bar under Section 37 of the NDPS Act applies. He further submitted that although charge-sheet has been filed but there is strong prima facie case against the applicant. He further submitted that the applicant is the main accused who was police officer and taking advantage of his official position, he has committed this antisocial crime and if the applicant is released on bail, then there is possibility of pressurizing and tampering of prosecution witnesses and evidence and absconding of applicant which will hamper the trial and as such prayed for rejection of the application.

11. In the light submissions advanced by both sides, I have perused the application, say Exh. 16 filed by the investigating officer and the charge-sheet. Perused the aforesaid authorities relied upon by Ld. Advocate for the applicant. Applicant/accused No. 5 is a police constable serving with Ahilyanagar Local Crime Branch. It appears from the complaint that the informant API Kuldeep Dattatray Sapkal along with staff and panchas raided the

spot on the basis of secret information and laid trap and they caught the accused No.1 and on search of bag on his person, they found huge quantity of Mephedrone (MD) weighing 1 kg 52 grams worth Rs.2,10,40,000/- in his possession and on further inquiry the name of accused No.2 came to light to be drug supplier and in further investigation, it transpired that it is the present applicant who is the main supplier of the said drug. Charge-sheet discloses that there is active participation of present applicant/accused No. 5, who is a police constable with LCB Ahilyanagar and taking advantage of his official position, he has taken out aforesaid drug seized in crime No. 499/2025 registered with Shriram City Police Station by refilling refined wheat flour therein and gave said huge quantity of drug to accused no.2 and other accused persons and they in turn were selling it through accused No.1. There is also confessional statement of the accused No. 5 as to how he has did the entire transplant of muddemal from another crime with the accused persons. There is also statement of eye witnesses Wajid Azim Shaikh and Rashid Rajjak Shaikh who have seen the present applicant changing the muddemal in the police Malkhana and keeping the prohibited substance in his car which in turn supports the theory of prosecution. There is also CDR showing relationship between the accused persons. During investigation, huge quantity of Mephedrone (MD) weighing 9 kg 655 grams worth Rs.19,31,00,000/- also came to be seized from the possession of

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remaining accused persons. Station diary No. 55 dated 17.01.2026 shows that immediately after getting information, its entry was taken in the station diary and its information came to be given to the Superior officer vide letter dated 17.01.2026 and necessary permission was obtained vide station diary entry No. 57 dated 17.01.2026 and letter dated 17.01.2026 the raid was conducted. It is not so that only station diary entry was made as tried to be projected by the defence. So prima facie there is compliance of Section 42(1) and (2) of the NDPS Act.

12. Charge-sheet discloses that after seizure of muddemal, there was proper sampling and sealing of the muddemal property and necessary inventory has been drawn by the Ld. Magistrate under section 52-A in this crime as well as in another crime from which accused No. 5 has transferred the muddemal illegally and gave it to the remaining accused persons. C. A reports placed in the charge-sheet shows that when the muddemal was received by the C. A. Office the same was in sealed condition and it bears the same seal which was affixed on the seized muddemal by the investigation officer at the time of seizure. So, the same prima facie shows that there is no tampering with the muddemal property. Prima facie there is no breach of any procedure pertaining to sealing and sampling of muddemal property. What has been seized is prohibited substance which is covered under the NDPS Act. No doubt, there is nothing in the charge-sheet to show that any videography was done by the entire procedure and

attempt of the investigating agency to collect CCTV footages has failed but if the entire charge-sheet is seen then the same is sufficient to show that it is the applicant who is the matermind of this crime. Various station diary entries and notices placed in the charge-sheet shows proper compliance of all the mandatory provisions of NDPS Act. Overall the charge-sheet discloses that there is prima facie evidence against the applicant and it is the applicant who appears to be a drug peddler who took advantage of his police position and entered in drug dealing. Moreover, what has been seized is huge commercial quantity of prohibited substance weighing more than 10 kg worth Rs. 21,00,00,000/- and so the bar under section 37 of the NDPS Act applies.

13. Much stress is given by Ld. Advocate for the applicant regarding the time of arrest of accused No. 5. I have perused the record. Arrest memo and remand papers show that the accused No. 5 was arrested on 21.01.2026 at 4.02 hours and immediately he is produced before the Ld. Magistrate on the same day and necessary information of arrest of the accused No. 5 was given to his wife and brother on the same date i.e. 21.01.2026. Necessary entry is taken in station diary No. 35 and the grounds of arrest, reasons of arrest, time of arrest is mentioned in it and well within time, the applicant came to be produced before the Court for remand. So, it cannot be said that there was any breach of mandatory provision relating to arrest.

14. The alleged offence is serious in nature and punishable for imprisonment of 10 years. Although charge-sheet has been filed but looking to the nature of offence and quantity of prohibited drug and the applicant being a police officer as well as a drug peddler, the apprehension of prosecution that if the applicant is granted bail, then there is possibility of pressurizing and tampering of the prosecution witnesses, threatening them and absconding of accused No.5 cannot be ruled out completely. All this will seriously hamper the trial.

15. During the course of argument, Ld. Advocate for the applicant relied on various authorities cited supra. I have gone through all the aforesaid authorities cited supra. Nobody can dispute the aforesaid proposition of law laid down in the said authorities. However, in the present case there is no breach of any mandatory provision of the NDPS Act nor there is only statement of co-accused. Rather there is statement of accused No. 5 himself. In addition to it, there is also statement of eye witnesses showing that the applicant is involved in this crime. There is no illegal arrest of the accused nor there is any illegal detention. So, the facts of the present case is different from all the rulings cited supra. With due respect, the benefit of ratio laid down in all the aforesaid authorities cited supra are not available to the applicant.

16. For the aforesaid reasons, the applicant has failed to make out a case for releasing him on bail at this stage. Therefore,

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**Special Case No.757/2026**

this application deserves to be rejected. Resultantly, the following order :-

**ORDER**

Application (Exh.12) is rejected.

(Dictated and pronounced in open Court.)

Ghodnadi-Shirur.  
Date:30/07/2026.

(N. S. Momin)  
Additional Sessions Judge,  
Ghodnadi-Shirur, Dist. Pune.