

Spl.(NDPS) Case No.36/2024
State of Maharashtra Vs.
Sameer Abdul Kalam Shekhware.

ORDER PASSED BELOW EXH.23

- 1) The present application has been filed by the **accused Sameer Abdul Kalam Shekhware**, u/s.483 of BNSS, 2023 for regular bail in the present case for offences punishable u/s. 8(c), 20(b)(ii)(c), 29 of NDPS Act, 1985.
- 2) Prosecution case in short is that, accused apprehended while carrying contraband Charas weight around 1 kilo 37 gram in his motorcycle scooty, which is commercial quantity as per NDPS Act.
- 3) Ld. Advocate Shri. Ghayal for accused would submit that, accused was arrested on 18.05.2024. The previous bail application filed by accused before this Court was rejected on 08.11.2024. Thereafter, accused has filed bail application bearing criminal bail application No.1973 of 2025 before the Hon'ble Bombay High Court, which has been withdrawn with liberty to file fresh bail application, because in that bail application grounds of section 52(A) of NDPS Act has not been pleaded. Thereafter, accused filed bail application bearing criminal bail application No.143 of 2026 before the Hon'ble Bombay High Court, which was also withdrawn as summer vacation is due and order on bail application would not be passed. Then, filed this bail application before this Court.
- 4) Ld. Advocate for accused further submitted that, investigation officer has not complied with mandatory provisions of section 52(A) of NDPS Act, which provides for disposal of seized Narcotic Drugs and Psychotropic Substances. It is submitted that, as samples forwarded to FSL Mumbai does not bear signature of Ld. Judicial

Magistrate, the FSL Mumbai returned said samples. Thereafter, alleged samples were again forwarded after taking signature of Ld. Judicial Magistrate to the FSL Mumbai. The search and seizure of alleged contraband must be carried out as per mandatory provisions given under Act. Thus, on ground of breach of mandatory provisions of section 52(A) of NDPS Act, accused entitled for bail.

5) Ld. Advocate for accused further submitted that, accused is in custody from 18.05.2024 without trial. Hence, his fundamental right to speedy trial under Article 21 of the Constitution of India has been violated. Therefore, accused entitled for bail on the ground of long incarceration without trial. Hence, prayed for grant of bail. In support of his contention he relied on case laws, which are discussed in the later part of this order.

6) Ld. A.P.P. Shri. Mahakal filed say(Exh.26) & Investigation Officer filed say(Exh.27) and strongly opposed bail application. Ld. A.P.P. submitted that, first bail application filed by accused after charge-sheet, which was decided on merits. This is second bail application without showing any change in circumstances. Hence, present application is not tenable. It is further submitted that, as regards contention of accused that no signature of Ld. Judicial Magistrate on the sealed sample has been considered in previous bail application. Thus, there is no need to go into merits of said order, as the said ground needs to be decide at the time of trial. On the point of delay in trial it is submitted that, case is pending for filing say by accused on application filed by prosecution u/s.294. Accused has not filed say on the said application till today, thereby himself delaying the trial. Hence, accused can not take advantage of his own wrong. It is further submitted that, as quantity seized is commercial quantity

twin conditions prescribed u/s.37 of NDPS Act needs to be satisfied. In support of his contention he relied on case law of **Union of India Vs. Vigin K. Varghese, 2025 INSC 1316**. Wherein, the Hon'ble Supreme Court set aside bail order granted by the Hon'ble Bombay High Court without recording satisfaction about twin conditions prescribed u/s.37 of NDPS Act. Further, observed that delay in trial can not override statutory embargo u/s.37 of NDPS Act especially in commercial quantity drug cases. Thus, prayed for rejection of bail application.

7) Heard both the sides, perused application, say filed by Ld. A.P.P. & I.O. so also perused charge-sheet.

8) It appears that accused is alleged to be found in conscious possession of contraband Charas with commercial quantity. Previously, accused had filed bail application before this Court, which was rejected by this Court on merit considering sufficient compliance of section 50 of NDPS Act. Thereafter, accused had filed two bail applications before the Hon'ble Bombay High Court and withdrawn them for reason best known to the accused. In the present application accused contended that, investigation officer has not complied with section 52(A) of NDPS Act, which provides for disposal of seized Narcotic Drugs and Psychotropic Substances. On perusal of section 52 of NDPS Act it appears that, it provides for procedure for inventory and drawing samples before Ld. Judicial Magistrate. Its primary purpose is to dispose of seized contraband by preparing inventory and drawing samples. Thus, violation of provisions of section 52(A) of NDPS Act does not violate trial or render any evidence collected during investigation as inadmissible. This Court as previously observed that sufficient compliance of section 50 of NDPS Act was

done. Thus, there is no need to take different view and any prejudice to the accused will be consider at the time of trial.

9) To release accused on bail involving commercial quantity of contraband, stringent conditions u/s.37 of NDPS Act must be met and Court must record affirmative finding that, there are reasonable grounds to believe accused is not guilty and accused is not likely to commit any offence while on bail. In the present case, non-compliance of section 52(A) of NDPS Act does not mean accused is not guilty when the report of FSL in respect of sample is positive. Further, no criminal antecedent of same nature offence does not mean accused not likely to commit any offence while on bail.

10) It appears from record that, charge against accused was framed on 31.01.2026 and notice u/s.294 of Cr.P.C. has been filed by prosecution on 11.03.2026. Since then matter is adjourned on 25.03.2026, 08.04.2026, 22.04.2026, 06.05.2026, 20.05.2026 for filing say by accused on notice u/s.294 of Cr.P.C. It shows delay on part of accused. Accused can not take benefit of his own act of delaying trial. The prolonge custody alone does not justify grant of bail, if twin conditions u/s.37 of NDPS Act are not met.

11) The case laws cited on behalf of accused are as under:

(I) Alam Bhure Shah Vs. State & Another, 2023 DGLS(Bom.) 2793, (Bombay High Court, Panaji Bench), wherein the Hon'ble Bombay High Court granted bail to the accused recording satisfaction about twin conditions u/s.37 of NDPS Act, that as there is no criminal antecedent against the applicant, he is not likely to commit similar activities and though applicant alleged to be found in possession of Charas, a reference to Cannabis in the FSL report. In the present case

twin conditions u/s.37 of NDPS Act are not met, hence case law not applicable to the present case.

(II) Rajvir Singh @ Raju Vs. State of Punjab, 2018 Legal Eagle 1516, wherein the Hon'ble Punjab and Haryana High Court granted bail to the accused in commercial quantity of contraband, considering non-compliance of section 50 of NDPS Act in respect of personal possession in case of a gunny bag containing contraband. In the present case this Court in previous bail application made observation about compliance of section 50 of NDPS Act, hence case law not applicable to the present case.

(III) Rahul Rai Vs. State of Kerala, Bail Appl. No.9150 of 2024, Dt.13.01.2025. In this case Charas and Ganja seized from applicant are small quantities. The question whether the mushroom and magic mushroom capsule together can be considered as commercial quantity. The Hon'ble High Court granted bail considering delay in trial violates fundamental right of accused. The facts of present case is different, hence not applicable.

(IV) Hemraj Ganeshram Patel Vs. Intelligence Officer, NCB, Mumbai Zonal Uni, Mumbai & Anr., 2023 DGLS (Bom.)128, wherein the Hon'ble Bombay High Court granted bail to the accused who was not found in possession of contraband and who was made accused only on the basis of statement of co-accused. The facts of present case is different, hence not applicable.

(V) Manjunath Basanna Vs. Police Inspector & Anr., 2023 DGLS (Bom.) 2460, Bombay High Court, Panaji Bench, wherein the Hon'ble Bombay High Court granted bail to the accused in commercial quantity of contraband, on ground that as there is no criminal

antecedent against the accused, it is not possible to infer he likely to commit offence of similar nature in future. In the present case condition of accused not guilty of offence is not met, hence not applicable.

(VI) Manish Sisodia Vs. Directorate of Enforcement, 2024 DGLS(SC) 724, (Supreme Court), wherein the Hon'ble Supreme Court granted bail to the accused in offences punishable under PMLA Act on ground of long incarceration without trial. The facts of present case is different, hence not applicable.

12) Section 37 of NDPS Act put specific embargo on grant of bail and obligates the Court to record satisfaction on twin conditions. Thus, mere delay in trial does not justify grant of bail, in absence of non satisfaction of twin conditions. Hence, this Court is not inclined to exercise discretion in favour of accused. Hence, I proceed to pass following order.

:: ORDER ::

The bail application(Exh.23) is rejected.

Sd/-

Mangaon.

(M. K. Patil)

Date: 28.05.2026.

Addl. Session Judge, Mangaon.