

Special NDPS case No.242/2023  
-- 1 -- Taloja CR 303/2023  
The State V/s. Md.Imran Md.Aslam  
Mukadam and others  
Order below Exhibit No.05.

MHRG170023372023



**ORDER BELOW EXH. 05**  
**IN SPECIAL (NDPS) CASE NO.242/2023**  
**TALOJA C.R.NO.303/2023**  
**THE STATE V/S. MOHAMMAD IMRAN MOHAMMAD ASLAM**  
**MUKADAM AND OTHERS**  
**( PASSED ON 04<sup>th</sup> DAY OF APRIL, 2024)**

This application is on behalf of the applicant/accused No.1-Mohammad Imran Mohammad Aslam Mukadam vide Section 439 of the Code of Criminal Procedure to enlarge him on bail.

2. This application is strongly opposed on behalf of prosecution vide Exh.06.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether grounds are justified to release the applicant/accused No.1 on bail vide Section 439 of the Code of Criminal Procedure ?	No.

II.	What Order ?	The application is Dismissed.
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### **REASONS**

4. Perused application, say filed. Heard learned advocate for applicant/accused No.1-Indrajeet Bhosale as well as learned A.P.P Shri.C.Y.Patil.

#### **AS TO POINTS NO. I AND II :**

#### **BRIEF FACTS OF PROSECUTION :**

5. The present prosecution is based on raid effected upon receiving secret information to Anti-Narcotic Cell, Crime Branch, Navi Mumbai. The raid is effected on 05.09.2023, at about 16.15 hours, on the road in front of Marwa building Ingate, Phase 2, Sector 22, Taloja, Dist.Raigad. The applicant /accused was found in the possession of the contraband *Mephedrone* weighing 500 gm worth Rs.50,00,000/- for sale. The contraband is seized by the police in pursuance of the panchnama.

6. On that count, Taloja Police station registered the Crime No.303/2023 Dated 05.09.2023 for the offence

punishable under Section 8(c) and 22(c) of the Narcotics Drugs and Psychotropic Substances Act against the present applicant/accused.

7. Applicant/accused No.1 was arrested on 05.09.2023 and produced before the court on 06.09.2023. Initially he was remanded to police custody till 09.09.2023. It was extended till 11.09.2023. Thereafter, he was remanded to Judicial Custody as per order dated 11.09.2023. Presently, the applicant/accused No.1 is in Judicial Custody.

**WHETHER GROUNDS OF BAIL ARE MADE OUT ?**

8. The present prosecution is based on a raid effected in pursuance of specific intelligence received. The contraband was found in possession of applicant. The quantity of the contraband – *Mephedrone* was weighing 500 gms. In view of table appended to the NDPS Act, the contraband *Mephedrone* vide serial No.238-F provides small quantity 2 gms and commercial quantity 50 gms. The seized contraband was weighing 500 gms as such, it is commercial quantity.

9. Once the seized contraband was of commercial quantity as such, bar vide Section 37 of NDPS Act has application to the present bail. The said bar is not an absolute.

It is for the applicant to negativate the said bar in the light of facts and the pre-conditions appended to the Section 37 of the Act.

10. The investigation of the crime is over and charge-sheet is filed. On perusal of the charge-sheet, it is apparent that the contraband is seized from the possession of the applicant. He was carrying a contraband in a polythene bag in the pocket of the pant. The search was effected at his house and nothing was found over there. The anti-narcotic team after his arrest immediately produced before the learned magistrate.

11. Learned advocate of applicant vehemently argued that it was quite impossible to carry 500 gm contraband – Mephedrone in the pocket of the pant. The officers have carried testing kit alongwith them as mentioned in the panchnama, however the testing of contraband with the help of kit was not conducted. The arrest of the applicant was on 05.09.2023 whereas inventory panchnama was drawn on 11.09.2023, thus it is in defiance to Section 53 of NDPS Act. After inventory, the sample ought to have been sent to laboratory from the office of magistrate, but it was kept at police station and then forwarded to laboratory, thus the chances of tampering cannot be ruled out.

12. Learned A.P.P in reply submitted that the contraband weighing 500 gm can easily kept in a pocket. The office of anti-narcotic cell has earlier occasion to see the contraband weighing 1 kg easily kept in a pocket of the pant in other crimes. Further learned A.P.P submitted that the application for inventory forwarded to learned magistrate on same day on 05.09.2023, however it was kept for order on 11.09.2023. After order of learned magistrate dated 11.09.2023, inventory panchnama was drawn on the same day. The process of inventory continued till evening as such, the sample was kept at police station in a safe for a short time till next date and then it was forwarded to the laboratory. Thus there is no delay in the inventory panchnama.

13. Learned A.P.P further submitted that the testing kit was with the anti-narcotic cell in pursuance of secret information received, however the same was not used since there is no result of the testing kit specifically for the contraband Mephedrone. Thus the testing was not conducted though kit was with the officers since there is no such testing kit available for the contraband - Mephedrone.

14. In the light of this rival submission, apparently there is no delay for the inventory panchnama since the order passed

by learned magistrate on 11.09.2023. The contraband was kept in safe with police station and same was subsequently forwarded. The use of kit for contraband Mephedrone as observed above was not required since the kit did not show any result of analysis for this contraband. Thus there is no defiance to the mandatory provision contemplated under NDPS Act prima facie.

15. Beside this, the applicant has not set up other grounds for bail. The applicant was appraised of his legal right to be searched before nearest magistrate or gazetted officer vide Section 50 of the Act. There is substantial compliance of Section 42 of NDPS Act.

16. On the backdrop of this, the applicant has not negatived the bar vide Section 37 of the Act. On this count alone, the applicant does not deserve for bail. Further the applicant has criminal antecedents of like nature offence. Therefore on this count also, the applicant is not entitled for bail. Hence, I answer Point No.I in the negative. With this, I pass following order ;

Special NDPS case No.242/2023  
-- 7 -- Taloja CR 303/2023  
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**ORDER**

1.	The application (Exh.05) for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant/accused No.1- Mohammad Imran Mohammad Aslam Mukadam is dismissed.
2.	A soft copy of this bail order be forwarded to the applicant/accused through Superintendent, Taloja Jail by e-mail for information in view of observation of <b>Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) NO.4/2021, Dated 31.01.2023.</b>
3.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

**Place : Panvel.**

**Date : 04.04.2024.**

**( K.G. Paldewar )**  
**Additional Sessions Judge,**  
**Panvel**

Arguments heard on	02 <sup>nd</sup> Day of April, 2024.
Judgment/order delivered on	04 <sup>th</sup> Day of April, 2024.
Dictated on	04 <sup>th</sup> Day of April, 2024.
Transcribed on	04 <sup>th</sup> Day of April, 2024.
Checked and signed on	06 <sup>th</sup> Day of April, 2024.

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre  
Name of the Court : Additional Sessions Court,  
Panvel  
Date of Judgment/Order : 04.04.2024.  
Judgment/Order signed on : 06.04.2024.  
Presiding Officer : K.G. Paldewar  
Judgment/Order uploaded on : 06.04.2024.