

Cri.Bail Application No.38/2026
Ayush Tambe .Vs. State Of
Maharashtra through P.S.O.
P.S. Wani

ORDER PASSED BELOW EXHIBIT-1
(Date: 08.04.2026)

The applicant has filed the present application under section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of Regular Bail in crime No.619/2025 for the offences punishable under section 8(c), 21(b), 29 of N.D.P.D. Act filed by P.S. Wani.

2. Heard counsel for the applicant Shri. V.M. Joshi and Shri. D.M. Nimkar, A.P.P for the State. Perused application, documents submitted alongwith the application, reply of I.O through A.P.P. No case diary produce though called.

3. The counsel for the applicant submitted that there is no recovery from the present applicant as the recovery of the contraband were done from the accused Nos. 1 and 2. The present applicant is arrested on the basis of confessional statement of one of the accused recording by the I.O. The said information can be said to be hearsay evidence and cannot be taken into consideration for holding the involvement of the applicant in the present crime.

Moreover, the contraband seized are not of commercial quantity and they were only 1.5 and 1.5 gram in separate seizure. Moreover, one of the accused who was arrested earlier is released on bail and therefore, the present applicant is also liable to be released on bail on the ground of parity. Charge-sheet against two accused are already filed on record which shows the material investigation is already over and therefore, prayed for allowing the application.

4. On the other hand, the learned A.P.P for the State opposed the application contending that there are conversation between the applicant and the earlier arrested accused persons. The I.O has seized C.D.R and S.D.R of the said conversation which is sufficient to connect the present applicant involved in the commission of the offence. The applicant is a habitual offender and number of cases are registered at Nagpur relating to the commission of the same offences. The investigation in respect of the application is still in progress and charge-sheet is filed only against the accused Nos.1 and 2. Therefore, as there is material against the accused this application be rejected.

5. In support of this argument counsel for the

applicant relied on two authorities:-

- A. Tofan Singh .Vs. State Of Tamil Nadu
(2021) 4 SCC 1
- B. Shashikant Prabhu .Vs Rahul Saini and
another arising out of B.A. No.198/2019 and
Cri. B.A. No.1617 of 2019 by Hon'ble Bombay
High Court.

6. I have gone through the facts of both the case cited which are based on the recording of confessional statement under section 67 of N.D.PS Act by the I.O and the bar of section 25 of Indian Evidence Act regarding the confessional statement recorded by the Police Officer is discussed.

7. In the present case, FIR was lodged on 11/09/2025 by P.S. Wani and thereafter the accused were arrested and later on present applicant was arrested on 09/01/2026 and since then he is in custody. The other two accused were arrested on 11/09/2025 and the present applicant was absconding and thereafter he was caught by Nagpur Police and handed over to the I.O. The charge-sheet in respect the present applicant is not filed on record.

8. It is clear from the say of I.O that the

contraband which were seized during the investigation were from the accused Nos. 1 and 2 who were arrested earlier and while recording their statement under section 67 of the N.D.P.S. Act they made a confession in which the involvement of the present applicant is shown and, therefore, the present applicant was also made accused and the investigation started. Since arrest nothing has been seized from his custody. Only on the basis of the alleged telephonic conversation of which the C.D.R and S.D.R. are seized the applicant is made co-accused in the present crime.

9. Already the applicant has suffered custodial interrogation and material investigation in respect of the applicant is already over. Though contended but nothing is placed on record to show the criminal antecedent of the applicant involved in commission of similar type of offences. Moreover, further custodial interrogation of the applicant is not required. It is material to note that, the contraband are not seized from the applicant and the seized contraband are not of commercial quantity. As far as the C.C.T.V. Footage and C.D.R. and S.D.R are are concerned they are the piece of evidence which will be considered at the time of trial and not at this preliminary stage. Moreover, in view of the principle

laid down in the case cited, the bar of section 25 of the Evidence Act will be attracted to the confessional statement recorded under section 67 of the N.D.P.S Act by the I.O. Therefore, by imposing certain conditions and restriction and in view of the above discussion the applicant has made out the case for his release of bail. As a result, I allow the application and pass the following order:-

ORDER

1. Application Exh.1 is **allowed**.
2. Applicant Ayush Tambe be released on PR and SB of Rs.50,000/- with one solvent surety in the like amount in Crime No.619/2025, registered with Police Station Wani for the offences punishable under Section 8(c), 21(b) and 29 of N.D.P.S.Act.
3. Applicant shall not commit similar type of offence or any cognizable offence while on bail.
4. Applicant shall attend investigating officer on every Tuesday between 11.00 a.m. to 12.00 noon by attending investigating officer at Police Station, Wani till filing of charge-sheet against him and also as and when called by investigating officer till filing of charge-sheet against him by issuing prior written notice.
5. Applicant shall not hamper or tamper any

prosecution witnesses and/or any prosecution evidence in any manner.

6. Applicant shall not leave the country till completion of trial without permission of learned Trial Court in the event of filing of charge-sheet against him.
7. Applicant shall furnish all details of his residential address to the investigating officer while submitting surety and shall also inform any change in his residential address immediately to the Court and to the investigating officer.
8. Applicant shall attend the trial regularly and shall protract the trial due to his absence in any manner in the event of filing of charge-sheet against him.
9. The prosecution is at liberty to apply for cancellation of bail in event of breach of any condition as mentioned above by the applicant.

KELAPUR

DATE: 08.04.2026

(M.A. Kothari)

Additional Sessions Judge
Kelapur