

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1145 OF 2015

Afaque Asif Sayyed

..Applicant

-Versus-

State of Maharashtra

..Respondent

Mr. Ayaz Khan for applicant

Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 22<sup>nd</sup> December 2015.

P.C.

1] The applicant is seeking bail in C.R.No.II-15 of 2015 registered with Mira Road Police Station, Thane (Rural) dated 14<sup>th</sup> March 2015 under section 22 of the Narcotics Drugs and Psychotropic Substances Act, for short NDPS Act.

2] The F.I.R. has been lodged by Mr. Pravin Kumar Salunke, Assistant Police Inspector attached to Mira Road Police Station on 13<sup>th</sup> March 2015. In the said F.I.R. it is stated that after receipt of confidential information, legal formalities were complied with and thereafter the police laid a trap at the spot of incident. That on 13<sup>th</sup>

March 2015, at about 21.45 hrs (9.45 p.m) a Cheverlott Company's Beat Car bearing Registration No.MH-05-BS-5387 came at the spot of incident. One person got down from the said car. He was holding a black coloured plastic bag in his hand and was observing persons who were passing through the said road. The informant, thereafter, gave signal to the police party and told that it is the said person by name Afaq Sayed, who has come there to give delivery of contraband, Mephedrone (for short MD). The police thereafter surrounded the said person. Senior Inspector of Police, Mr. Kshirsagar showed his identity card to the said person and informed him that he is a Gazetted Officer and, thereafter, made enquiry with the said person about his name and residence. The said person (applicant) was trying to hide the said bag which was in his hands. The Senior Inspector of Police Mr.Kshirsagar, thereafter, appraised the said person of his legal right to be searched before the Gazetted Officer or a Magistrate as contemplated under the provisions of NDPS Act.

Thereafter the applicant told the police that he has no objection to be searched by the police party. During the search of the applicant the powder of Mephedrone (MD) was found in the

said black coloured plastic bag. The said contraband was weighed on the spot and it was found to be 108 grams. After completion of investigation, the charge sheet has been filed by the police.

3] Learned Counsel for the applicant submitted that the moment the police inspector being member of raiding party informed the applicant that he himself is a gazetted officer, and whether the applicant would like to have himself searched before another gazetted officer or a Magistrate, the provisions of section 50(1) of the NDPS Act are breached. In support of his contentions, he relied upon the decisions of the Supreme Court in the case of State of Rajasthan Vs. Parmanand & Anr. reported in (2014) 5 SCC 345 and in the case of Special Leave to Appeal (Cri) No.4590 of 2015 (Gurnam Singh @ Gagan Vs. State of Punjab). He further submitted that the Apex Court in view of the similar facts and circumstances of the present case was pleased to grant bail to the applicant therein. Learned Counsel for the applicant thereafter placed his reliance upon a judgement of the division bench of this Court reported in 2001 (5) BCR (Cri) 9 in the case of Dharmaveer Lekhram Sharma Vs. State of Maharashtra.

4] The Division Bench of this Court in para 8 of the said judgment

has held that inclusion of police officers who are also gazetted officers in the raiding party is obvious. However, mentioning of the fact while appraising the accused regarding their right as contemplated under section 50 of the NDPS Act suggests, by necessary implication that accused were discouraged in obtaining search by independent authority. That the possibility of misleading the accused cannot also be ruled out in this regard. It has been further held that in view of the same the appraisal as contemplated under section 50(1) of the Act gets vitiated. In the present case, a plain reading of the FIR itself makes it clear that the senior P.I. Mr.Kshirsagar who was also a member of raiding party before appraising the applicant of his legitimate right under section 50(1) of the N.D.P.S. Act has introduced himself to the applicant as also a Gazetted officer. This in view of the ratio laid down by the aforesaid judgements, clearly vitiates the provisions of section 50(1) of the NDPS Act. In view of the above, the applicant has made out a case to be released on bail.

Hence the following order:-

- (I) The applicant be released on bail in C.R.No.II-15 of 2015 registered with Mira Road Police station on bail on his furnishing

P.R.Bond of Rs.1 lakh with one or two solvent local sureties in the like amount.

(ii) The applicant after his release on bail shall attend the Mira Road Police Station on first Monday of every month between 10.00 a.m. and 12.00 noon till the conclusion of trial;

(iii) The applicant shall not tamper with and/or influence the prosecution witnesses;

(iv) The application is allowed in the aforesaid terms;

(A.S.GADKARI, J)