

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.857 OF 2016

Taslim Halim Khan @ Diga ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Ayaz Khan for the Applicant
Ms.P.P. Shinde, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 27, 2016**

P.C.:

1. This is an application for bail. The applicant-accused is prosecuted for the offences punishable under sections 8C, 20 and 22 of the NDPS Act, 1985 in C.R. No.II-124 of 2015 registered with Mumbra police station, Thane, on 19.8.2015 at the instance of one Hafizulla Khan. On the basis of information, the police conducted a raid at Amrit Nagar Dargah, Mumbai, District Thane and pursuant to the said information, they apprehended the applicant with 55 gms M.D. Powder, a psychotropic drug. In the presence of panchas, his personal search was carried out and the drug was seized and sealed, as per the procedure laid down in the NDPS Act. It was sent to C.A. and the report of C.A. is positive. He is in the prison since 19.8.2015. His bail application is rejected by the learned Sessions Judge and hence, this application.

2. The learned Counsel for the applicant has submitted that the applicant-accused is innocent and the police did not comply with sections 42 and 50 of the NDPS Act, which are mandatory provisions. He pointed out that the information was received by one Mr.Nilesh H. More. However, he did not reduce it into writing in the station diary. The name of the applicant-accused is missing, which is different than the one which is stated by him in the statement recorded on 20.8.2015. He further submitted that the Police Inspector S.A. Bagwan informed the applicants-accused that he visited the officer and this disclosure vitiated the information and there is no complete compliance of section 50 of the Act. In support of this submissions, he relied on the compliance of section 50(1) of the Act and he relied on the judgment of the Supreme Court in the case of **State of Rajasthan vs. Parmanand & anr.**¹ and on the point of non-compliance of section 42, he relied on the judgment of this Court in the case of **A.Nasar Cherukara vs. R.G. Gokhale & Ors.**² dated 21.10.2010.

3. Learned Prosecutor has submitted that the applicant was arrested with 55 gms of M.D. Powder which is more than commercial quantity. She also submitted that the chargesheet is filed.

1 2014 (1) DRUGS CASES (NARCOTICS) 14

2 Criminal Application No.355 of 2010 in Criminal Appeal No.1057 of 2008

4. Perused the papers. In the statement in the station diary entry, the name of the applicant-accused is not mentioned. However, in the statement of Nilesh More, it appears that he was the one who received the information first and it was necessary on his part to reduce the information in writing as per the requirement of section 42 of the NDPS Act. I place reliance on the judgment of this Court in **A.Nasar Cherukara (supra)**. Perused the letter dated 19.8.2015, which is addressed to the applicant in compliance of section 50 of the NDPS Act wherein Mr.Bagwan, the Investigating Officer, has disclosed that he is a gazetted officer and whether the accused wanted to be examined before any other gazetted officer or not. As per the section, it is necessary for him to also give an option as to whether the applicant-accused wanted to examine before a learned Magistrate or before the gazetted officer. The option of the learned Magistrate is missing in the letter. Further, he should not have disclosed it when he was a member of the team.

5. I also place reliance on the order dated 8.2.2016 in Bail Application No.2105 of 2015 passed by the learned Single Judge of this Court wherein the disclosure by the Member of the team that he is a gazetted officer is considered as a breach of section 50(1) of the NDPS Act.

6. In view of this, I am inclined to allow this application and he shall to be released on bail on the following conditions:

- i) The applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount;
- ii) The applicant-accused shall not tamper with the evidence or pressurise the complainant;
- iii) The applicant-accused shall not indulge into any criminal activity under NDPS Act and shall attend on all the Court dates;
- iv) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.
- v) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

(MRIDULA BHATKAR, J.)