

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1523 OF 2015**

Siraj Mubarak Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Rohan Nahar a/w Mr.Praful Soni i/b Mr.P.D.Yadav, for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

ASI – Rajendra Rathod, Dy.Sp.Office, Solapur Rural, Solapur.

***CORAM : REVATI MOHITE DERE, J.
DATE : 1st APRIL, 2016***

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 2 of 2015, registered with the Solapur Taluka Police Station, Solapur for the alleged offences punishable under Sections 8(c), 20(b)(ii)(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act.
3. According to the prosecution on 14th January, 2015 at about 10

p.m., the complainant received secret information, that the present applicant and one unknown person were transporting *ganja* in a Tata Indica Car bearing no.MH13 B.N.0695, and that they were going to come near S.R.Petrol Pump on the Solapur-Tuljapur Road. On receipt of the said information, after complying with Section 42(2) of the NDPS Act, a trap was laid. The aforesaid car arrived at the spot and the said two persons stood outside the said vehicle. When the complainant and the raiding squad approached them, the applicant and the other co-accused tried to escape from the spot, however they were apprehended. On inspection 72,900 kgs of *ganja* was found in the said vehicle.

4. Learned Counsel fore the Applicant contended that there was non-compliance of Section 42(2) and Section 50 of the NDPS Act. He submitted that it was obligatory on the part of the Court to see whether there was compliance of the said provisions and if there was non-compliance, the applicant was entitled to be enlarged on bail.

5. Learned APP opposed the bail application. She submitted that there has been compliance of both, Section 42(2) of the NDPS as well as

Section 50 of the NDPS Act. She submitted that on receipt of information, the same was forwarded to the Superintendent of Police and as such there was compliance of Section 42(2) of the NDPS Act. As far as Section 50 of the NDPS Act is concerned, she submitted that the said section would not apply in the facts of the present case. She submitted that Section 50 applies only in case of personal search of a person and it does not extend to search of a vehicle or a container or a bag or premises. She relied on the Judgment in the case of ***Madan Lal and Another v/s State of Himachal Pradesh***,¹ in support of her submission.

6. Perused the charge-sheet and relevant papers. It appears prima-facie, that there is compliance of Section 42(2) of the NDPS Act, inasmuch as, the information that was received was forwarded to the Superintendent of Police, pursuant to which the raid was conducted. As far as Section 50 of NDPS Act is concerned, it prima-facie appears that the same will not apply to the facts of the present case, inasmuch as, the *ganja* was found in the vehicle. The Apex Court, in the case of ***Madan Lal and Another v/s State of Himachal Pradesh (Supra)*** has observed in para 17 as

1 2003 Cri.L.J.3868

under:-

“17. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises. (See *Kalema Tumba v. State of Maharashtra and another* (JT 1999 (8) SC 293), *The State of Punjab v. Baldev Singh* (JT 1999 (4) SC 595), *Gurbax Singh v. State of Haryana* (2001 (3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's case* (*supra*). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance.”

7. The quantity which is seized is a commercial quantity. Apart from the aforesaid, the trial in the said case has commenced, inasmuch as, charge is framed and the matter is posted for recording of evidence of the first witness on 6th April, 2016.

8. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail.

9. Hence, the Application for bail is rejected and disposed of as such.

10. Needless to observe that the trial court shall decide the case on its own merits uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.