

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2105 OF 2015

Ashok Muktinath PandeApplicant.
Vs.

The State of Maharashtra.Respondent.

Mr,.S.S,Khan for the Applicant.
Mrs. M.H.Mhatre,APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 08TH FEBRUARY, 2016.

PC:

The applicant is seeking bail in CR No.II-25/2015 registered with APMC Police Station, Navi Mumbai under Section 8(c) and 20 of the Narcotic Drugs and Psychotropic Substances Act,1985.

2) The first information report dated 19.5.2015 is lodged by Mr. Suryabhan Jadhav, Police Head Constable attached to the Crime Branch, Navi Mumbai. It is stated in the said report that, a specific confidential information

received by the police, that a person was to come at a particular spot for dealing in psychotropic substance 'Ganja'. The police thereafter led a trap and accosted the applicant. The police asked the name and address of the applicant. Thereafter, Senior Police Inspector Shri. Jagtap showed his identify card to the applicant. The Police Inspector thereafter informed the applicant that he himself is a Gazetted Officer and whether the applicant would like to be searched either by some other Magistrate or other Gazetted Officer. The applicant informed the police that the police can take his search. The police thereafter took the search of the applicant and found 2-K.G. 'Ganja' from his possession. After completion of the investigation the police have filed the charge sheet.

3) A bare perusal of the first information report discloses that when the Police Inspector Shri. Jagtap at the inception itself informed the applicant that he himself is a Gazetted Officer and whether the applicant would like to have himself searched from another Gazetted officer or the Magistrate, the provisions of Section 50(1) of the

NDPS Act have been clearly breached. The said alleged appraisal under Section 50(1) of the NDPS Act is contrary to the ratio laid down by the Supreme Court in the case of State of Rajasthan Vs. Parmanand and 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). The Division Bench of this Court in the case of Dharmaveer Lekhram Sharma Vs. State of Maharashtra reported in 2001 (5) BCR (Cri.) 9 has also held in the similar manner. This Court in Bail Application No.1145/2015 in the case of Afaque Asif Sayyed Vs. State of Maharashtra by following the ratio laid down by the Supreme Court and the Division Bench of this Court has observed that the moment the Police Officer informs the applicant that he himself is the Gazetted Officer, and then apprises the accused with his right to be searched by other Gazetted Office of Magistrate, the provisions of Section 50(1) of the NDPS Act are violated. In view of the above, the applicant has made out a case to be released on bail.

Hence, the following order.

ORDER

- a) The applicant be released on bail in CR No.II-25/2015 registered with APMC Police Station, Navi Mumbai on his furnishing PR bond of Rs.25,000 with one or two solvent local sureties in the like amount.
- b) After release from Jail the applicant shall report to the Investigating officer on every 1st and 3rd Monday of the month between 10.00 a.m. to 12.00 noon till the conclusion of the trial.
- c) The applicant shall not tamper with the evidence and or influence the prosecution witnesses.
- d) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)