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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1409 OF 2017

Shivaji Mahadu Randive

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Kalidas More with Suresh Dubey for Applicant.

Mr. Ajay Patil, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 3rd October 2017.

P.C.

1] This is an application under Section 439 of Cr. P.C. for bail in CR No.3023 of 2016 dated 18.4.2016 registered with Khadki Police Station, Pune under Section 20(b)(ii)(C) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2] Heard the learned Counsel for the applicant and the learned APP and also perused the chargesheet annexed hereto.

3] It is the prosecution case that, Police Naik Shri Khilare received a confidential information from his informant on 18.4.2016 at

about 10.00 a.m that at about 1.00 p.m one person with specific description including the clothes which he was supposed to wear would come near Shoppers Stop Mall, Pune-Mumbai Road to sell the contraband namely Charas. Upon receipt of the said information Shri Khialare reduced it in writing and informed the said fact to A.P.I. Shri Ajay Waghmare attached to Anti-Narcotic Cell, Crime Branch, Pune City. A.P.I. Shri Waghmare further reduced the said information in the Information Register and informed the said fact to Police Inspector Shri Navale. That after complying with the basic necessary formalities for conducting the raid, police party along with two panch-witnesses went and laid a trap at the said place. That at about 2.10 p.m., a person with the matching description as per information provided by the informant came at the said spot. The raiding party accosted him and asked his name. The said person revealed his name as Shivaji Mahadu Randive (applicant). That the said person was apprised about his legal right as contemplated under Section 50 of the NDPS Act and thereafter his personal search was taken. In the carry bag which was with him the police found 1 Kg. and 200 grams of contraband, namely Charas. The Investigating Officer took samples from the said contraband and after complying with the necessary formalities, the applicant came to be arrested. After completion of investigation, police have submitted

chargesheet.

4] Learned Counsel appearing for the applicant submitted that, in the present case the prosecution has not complied with the mandatory provision of Section 42(2) of the NDPS Act i.e. the receiver of the information namely Police Naik Shri Khilare has not informed the said fact to his immediate superior i.e. Police Hawaldar, but has informed it to A.P.I. Shri Waghmare and therefore he has committed breach of Section 42(2) of NDPS Act. He further submitted that the Investigating Agency has failed to comply with the mandatory provisions of Section 50 of the NDPS Act as the applicant was not produced before any Gazetted Officer or Magistrate before taking his personal search.

He further submitted that there is a material discrepancy in the station diary Entry No.10 dated 18.4.2016, wherein the time for receiving the information and leaving the police station is mentioned as 12.15 p.m., however, endorsement at the end of search panchanama mentions the starting point of it as 12.05 p.m and the time of completion as 16.00 p.m. He therefore submitted that the applicant has been falsely implicated in the present crime, as the timing of start of search panchanama precedes the timing of station diary entry and as there is no co-relation between the said two entries and it can be presumed that the applicant has been falsely

implicated in the present crime.

He submitted that taking into consideration the failure of Investigating Agency in complying with aforesaid Sections of the NDPS Act, the present application may be allowed and application may be released on bail.

5] The record clearly indicates that after receipt of confidential information from the informant, Police Naik Shri Khilare has reduced the said information in writing and has immediately communicated it to A.P.I. Shri Waghmare. The technical objection raised by the applicant that Police Naik Shri Khilare ought to have submitted the said information to his immediate superior i.e. Police Hawaldar is recorded only for its rejection at the threshold, on the ground that Police Naik Shri Khilare gave intimation to the superior officer who was available at the relevant time before conducting the raid in question. Indubitably A.P.I. Shri Waghmare is a superior officer of Shri Khilare and what is contemplated under Section 42(2) of the NDPS Act is submitting information to the immediate official superior and what is necessary is the substantial compliance of the said provision. By accepting the aforesaid super-technical argument with regard to the hierarchy in the Police Department in submitting information, according to me, would frustrate the basic intention of the legislature in

enacting Section 42(2) of the NDPS Act. As noted earlier, what is required under Section 42(2) of the NDPS Act is substantial compliance of the said provision. In the present case a bare perusal of the record would clearly indicate that there is substantial compliance of the NDPS Act by the Investigating Agency.

6] The record further indicates that after the raiding party accosted the applicant, Investigating Officer immediately apprised the applicant with the information received by them, their purpose of taking search and had clearly apprised the applicant about his right under Section 50 of the NDPS Act, to be searched either before a Magistrate or before a Gazetted Officer to which the applicant denied and thereafter in the presence of two panch-witnesses namely Dinesh Pardeshi and Dinesh Aardalkar, personal search of the applicant was taken by the members of the raiding party. After taking into consideration the panchanama and statements of witnesses, according to me, the applicant was properly apprised about his right under Section 50 of NDPS Act by the Investigating Officer before taking search and therefore the contention of the applicant that the provisions of Section 50 of the NDPS Act have not been complied with, do not have substance in it.

7] As far as the discrepancy in the aforestated station diary entry No.10 dated 18.4.2016, wherein it is mentioned as 12.15 p.m. and the timing of, start of panchanama as 12.05 p.m. is concerned, it is the fact, which the applicant will have to prove as fatal to the prosecution case, at the time of trial. However, prima facie it appears that there is a human error in mentioning the said timing as 12.05 p.m at the end of said panchanama and benefit of which cannot be given to the applicant at this stage.

8] It is is to be noted here that, after receipt of specific information by the police, the applicant was accosted on the relevant day and date at a specific place and during his personal search, contraband (Charas) weighing 1 kg. 200 grams has been seized from him. The said quantity is commercial quantity and in view of the said fact, it cannot be said that the applicant has been falsely implicated in the present crime.

9] After taking into consideration the facts and circumstances of the present case, it is difficult to hold that the applicant is not guilty of offence punishable under NDPS Act.

In view thereof, application is rejected.

(A.S. GADKARI,J.)