

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1850 of 2017

Dashrath Sham Mhetre @ Sunny @ Dadu Vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Ayaz Khan and Zehra Charania i/by Dilip Mishra for the Applicant.

Mr.Prashant Jadhav, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 26th September, 2017

P.C.

1. This is an application under Section 439 of the Cr.P.C for bail in CR No. 203 of 2016 dated 21.10.2016 registered with Lashkar Police Station, Pune under Sections 8(c), 20(B) and 22 of the Narcotics Drugs and Psychotropic Substances Act.(for short NDPS Act)

2. It is the prosecution case that on 20.10.2016 the Investigating Officer received a confidential information that Dashrath Mhetre-applicant herein would come at a particular place with contraband. Accordingly a trap was laid and the applicant was accosted on the spot. It is the categorical case of the prosecution that the said raid was conducted between 12.30 a.m. to 2.00 a.m. in the night on 21.10.2016 i.e. intervening night of 20.10.2016 and 21.10.2016. The search of the applicant was taken on the spot in presence of the panch witnesses and 130 grms of Mephedrine and 210 grams of charas was found in his possession. After completion

of investigation the police have submitted charge sheet.

3. The record clearly indicates that the applicant was not given appraisal of his right under Section 50 of the NDPS Act and as has been enumerated by the Constitution Bench of the Supreme Court in the case of *State of Punjab vs. Baldev Singh reported in (1999) 6 SCC 172*. The Investigating officer has scribed the alleged panchanama dated 21.10.2016 allegedly in presence of two witnesses namely Dinesh Tarachand Pardeshi and Dinesh Adhardalkar however the record is silent about their independent statements recorded by the Investigating agency which allegedly supports or corroborates the version of the Investigating Officer, of appraisal under Section 50 of the said Act. The record further indicates that two witnesses namely Samir Amin Shaikh and Tanvir Yunus Shaikh have witnessed the accosting and search of the applicant in the intervening night of 20.10.2016 to 21.10.2016 at about 2.15a.m. The said two witnesses are absolutely silent about the factum that, the Investigating Officer and/or any other officer from the raiding party appraised the applicant about his right under Section 50 of the NDPS Act to be searched in presence of Gazetted Officer or a Magistrate. The said two witnesses have stated that after accosting the applicant the police immediately made enquiry with him and searched the applicant of his person. Prima facie, it appears that the prosecution case is shrouded with non compliance of the mandatory provisions of the NDPS Act. It prima facie appears that the prosecuting agency has not complied with the mandate of Section 50 of the NDPS Act and therefore the applicant is entitled to be released on bail.

Hence, the following order.

- a) The applicant be released on bail in CR No.203 of 2016 registered with Lashkar Police Station, Pune on his furnishing PR bond of Rs.1,00,000/- with one or two solvent local sureties in the like amount.
- b) After his release from Jail the applicant shall attend the concerned police station on every first and third Monday of the month between 11.00 a.m. to 2.00 p.m .
- c) The applicant shall also attend all the dates before the Trial Court
- d) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail
- e) 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.)