

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

CRIMINAL BAIL APPLICATION NO.173 OF 2018

Nafis Rafi Ahmed Shaikh

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Mr. Taraq Sayed a/w. Lochan Chandak for the Applicant.

Mr. Ameet Palkar, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 4th JULY 2018

P.C.:

1. This is an application under Section 439 of the Code of Criminal Procedure for bail in C.R.No.II-100/2017 dated 01.10.2017 registered with Mumbra Police Station under Section 8(c) r/w 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to 'NDPS Act').
2. Heard the learned counsel for the applicant and the learned APP. Perused the charge-sheet.
3. The prosecution case in brief is that, after receipt of secret information by the Investigating Agency that the applicant was to come near Mumbra Railway Station for sale of Crystal Mephedrone (MD) Powder to accused namely Deepak Patel, a trap was laid. As

per the information, the applicant arrived at the scene of offence when he was accosted by the Investigating Agency. It is alleged that after giving appraisal u/s.50 of NDPS Act a search of applicant was conducted and 54 Grms of Crystal Mephedrone (MD) Powder was found on the person of the applicant.

After completing the necessary legal formalities, the applicant was arrested immediately and after completion of investigation, police have submitted charge-sheet.

4. The appraisal as contemplated under Section 50 of the NDPS Act as given to the applicant in writing by the Investigating Agency, which is annexed at Page No.28 to the present application is incomplete and improper appraisal. The applicant was not apprised of his legal right that, he was also having right to be searched before the Magistrate. The words 'right' and 'Magistrate' are absent from the written appraisal given to the applicant by the Investigating Agency.

5. In view thereof, it *prima facie* appears that the right of applicant as contemplated under Section 50 of the NDPS Act has been violated and the recovery of the alleged contraband made at the instance of the applicant becomes doubtful. In view of the decisions

of the Supreme Court in the case of State of Punjab vs. Baldev Singh reported in (1999) SCC 172 followed in the case of State of Rajasthan vs. Parmanand and anr. reported in (2014) 2 SCC (Cri.) 563 the applicant is entitled to be released on bail.

Hence, the following order :-

- (a) The applicant be released on bail in C.R.No.II-100/2017 dated 01.10.2017 registered with Mumbra Police Station on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- (b) Before his release from Jail, the applicant shall submit photo copies of the documents of his residence before the Investigating Agency.
- (c) After his release from Jail, the applicant shall attend the office of Anti Narcotics Cell, Crime Branch, Thane on every first Monday between 11.00 a.m. to 1.00 p.m. initially for a period of six months and thereafter every first Monday of the month till the conclusion of trial.

6. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)