

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

CRIMINAL BAIL APPLICATION NO.592 OF 2018

Mohammad Sabir Mohd. Yakub. ...Applicant
Vs.
The State of Maharashtra ...Respondent.

Mr. S.S.Khan with Tanmay Vispute for the Applicant.
Mr N.B. Patil, APP. for the Respondent/State.

**CORAM : A.S.GADKARI, J.
DATE : 21st November, 2018**

PC :

1. This is an application under Section 439 of the Code of Criminal Procedure for bail in CR No.20/2017 dated 3.2.2017 registered with Taloja Police Station under Section 8(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substance Act (in short the “NDPS Act).

Heard the learned counsel for the applicant and the learned APP.
Perused the record.

2. It is the case of the prosecution that after receipt of confidential information that, two persons are arriving at a specific spot for selling contraband namely M.D. powder and Charas, a trap was led by the police. In pursuance of the said information when the applicant along with co-

accused arrived at the said spot, the police accosted them. The police apprised them of their right of search under Section 50 of the NDPS Act and thereafter took their personal search. In their personal search, Mathamphetamine powder weighting approximately 60 grams and Charas 100 grams was found. After completion of investigation, the police have submitted charge sheet.

3. The first information report itself and the statement of panch witness namely Rejendra Chavan clearly indicates that the appraisal as contemplated under Section 50 of the NDPS Act was a joint appraisal given to the applicant and co-accused namely Shoyeb Ali Khan.

The Supreme Court in the case of State of Rajasthan vs. Parmanand and anr. reported in (2014) 5 SCC 345, has held that, joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purpose of Section 50. That the communication of the said right to the person who is about to be searched is not an empty formality and therefore prescribed procedure has to be meticulously followed. It is further held that, the communication of the right has to be clear, unambiguous and individual.

The record indicates, that, the Investigating agency has not complied

with the mandatory provisions of Section 50 of the NDPS Act in its proper perspective and particularly in view of the above decision of the Supreme Court.

4. The record further indicates that, the appraisal as contemplated under Section 50 of the NDPS Act was given to the applicant was incomplete and as the applicant was not apprised of his legal right that he was also having right to be searched before the 'Magistrate'. The first information report and the panchanama effected after search clearly mentions that the Senior Inspector of Police Shri. Vinod Chavan even informed the applicant prior to his actual search that he also is a gazetted officer. It is apparent from the record that the applicant was not informed about his right to be searched before a Magistrate by the Investigating Officer.

In view thereof, it prima facie appears that, 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 v. Baldev Singh reported in (1999) Vol. 6 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 CR No.20/2017 dated 3.2.2017 registered with Taloja Police Station registered with Taloja 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) 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 Crime Branch, New Bombay on every first Monday between 11.00 am. and 1.00p.m. initially for a period of six months and thereafter every first Monday of the month till the conclusion of the trial.
- d) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)