

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

CRIMINAL BAIL APPLICATION NO. 1601 OF 2018
WITH
CRIMINAL BAIL APPLICATION NO. 1618 OF 2018

Yogendra R. Virkar ...Applicant

Vs.
The State of Maharashtra ...Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 1618 OF 2018

Swapnil S. Gaikwad ...Applicant.
vs.
The State of Maharashtra ...Respondent.

Mr. Aniket Nikam i/by Aashish Satpute for the Applicant.
Mr N.B. Patil, APP. for the Respondent/State.

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

PC :

1. These are applications under Section 439 of the Code of Criminal Procedure for bail in CR No.289/2017 dated 18.7.2017 registered with

Tembhurni Police Station, District Solapur under Section 20(B) of the Narcotic Drugs and Psychotropic Substance Act (in short the “NDPS Act).

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

2. It is the prosecution case that after receipt of specific information that, the applicants along with co-accused Rahul Shinde were carrying substantial quantity of ganja a Narcotic drug, from a particular car, a trap was laid and the said car was accosted by the police. As per the information the accused persons were found in the said car. The applicants along with co accused Rahul Shinde were appraised of their right under Section 50 of the NDPS Act before taking search of the car and also their personal search. A contraband namely 'ganja' weighing about 46 KG. was found in the dicky of the said car. After completion of investigation the police have submitted charge sheet.

3. The record indicates that the appraisal of their right as contemplated under Section 50 of the NDPS Act given to the applicants was a joint appraisal. The said fact can be clearly discerned from the first information report lodged by the police officer and the intimation given by the police in writing under Section 50 of the NDPS Act to the applicants. The intimation

in writing dated 18.7.2017 given to the applicants is annexed to the present application at Page No.39. Undoubtedly the said appraisal in writing to the applicants was a joint appraisal about their right under Section 50 of the NDPS Act.

4. 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 of the NDPS Act.. 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.

In view thereof, it prima facie appears that, right of applicants 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 applicants 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 applicants be released on bail in CR No.289/2017 dated 18.7.2017 registered with Tembhurni Police Station, District Solapur on their furnishing PR bond of Rs.25,000/-each with one or two separate solvent local sureties in the like amount.
- b) Before their release from Jail, the applicants shall submit photo copies of the documents of their residence before the Investigating Agency.
- c) After their release from Jail the applicants shall attend the office of Crime Branch, Solapur 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.)