

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

BAIL APPLICATION NO.1173 OF 2019

Amar Ram Gajghate	..	Applicant
Vs.		
State of Maharashtra	..	Respondent

**ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.771 OF 2019**

Sameer Khalil Shaikh	..	Applicant
Vs.		
State of Maharashtra	..	Respondent

**ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.816 OF 2019**

Milind Shankar Sabale	..	Applicant
Vs.		
State of Maharashtra	..	Respondent

Mr.Priyal G. Sarda for the applicants in all matters.
Mr.S.H. Yadav, APP for respondent-State.
Mr.Pandharinath Bodhanapod, PSI, Barshi City Police Station, Solapur.

CORAM : P.N. DESHMUKH, J.
DATE : 16th April 2019

P.C.:

. All these applications are heard together for the purpose of convenience as they are arising out of same C.R. No.201 of 2019 registered with Barshi City Police Station, District Solapur. In Anticipatory Bail Application Nos.771 of 2019 and 816 of 2019, applicants were protected by interim orders dated 29th March 2019 by

specific observation that for want of presence of Investigating Officer, namely P.I. Sarjerao Patil, learned APP was unable to assist the Court to establish compliance of mandatory provisions of Section 42(1) and (2) of N.D.P.S. Act. Similarly, for this reason, no compliance of Section 50 of N.D.P.S. Act would also be established. However, even today, Investigating Officer Sarjerao Patil, P.I. is not present but he has deputed one PSI Mr.Pandharinath Bodhanapod who admittedly has not carried out investigation in the present crime.

2. Heard learned counsel for applicants and learned APP. Perused case diary. It is submitted that case of prosecution is based on information received by Mr.Khandavi, Dy. Superintendent of Police, Solapur involving transaction of contraband drugs. There is no compliance of provisions of Section 42 (1) and (2) of N.D.P.S. Act established on record. It is further submitted that though it is also case of prosecution that personal search of applicant in Bail Application No.1173 of 2019 is obtained, he is not apprised of his right to have search in the presence of Magistrate as Gazetted Officer as contemplated under Section 50 of N.D.P.S. Act. Learned counsel therefore, referring to case of ***Ahemed Vs. State of Gujarat, (2000) 7 SCC 477*** and in the case of ***Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of***

Revenue Intelligence, (2018) 8 SCC 271 had contended that for non-compliance of above mandatory provisions and as involvement of applicants Sameer Shaikh and Milind Sabale in ABA Nos.771 of 2019 and 816 of 2019 respectively is even otherwise based on the confessional statement of co-accused, application be allowed.

3. As already stated aforesaid, by granting interim protection, both applicants were protected as there is non-compliance of mandatory provisions of Section 42(1) and (2) of N.D.P.S. Act nor Section 50 of said Act, though same are attracted.

4. During the course of arguments, learned APP to establish compliance of Section 42(1) has referred to station diary entry dated 27th February 2019 recorded at 22.23 hours, however, perusal of same would reveal that at that time, by taking said entry, raiding team members had left Police Station for conducting raid and nothing else. For establishing said compliance, learned APP had also referred to one document in case diary which is an order dated 27th February 2019 by Dy. Superintendent of Police, Barshi, District Solapur and perusal of this document, only establish, order issued by said officer to conduct raid and nothing else. As such, nothing is on record to establish compliance of

Section 42(1) and (2) of N.D.P.S. Act.

5. Similarly, though it is case of prosecution that personal search of applicant Amar in Bail Application No.1173 of 2019 is obtained, at the time of raid, one P.I. Patil introduced himself as Gazetted Officer of team and obtained his personal search, there is total non-compliance of Section 50 of said Act though attracted. As what is stated in post trap panchnama is that applicant was apprised of his personal search to be obtained by the members of raiding team, which he denied and was thereafter subject to personal search. In view of evidence as aforesaid, prima facie it is found that there is total non-compliance of above mandatory provisions.

6. Perusal of documents with case diary would reveal involvement of applicants Sameer Shaikh and Milind Sabale only on the basis of confessional statement of co-accused Amar which is inadmissible in law as this statement is made to police and thus hit by Section 25 of Indian Evidence Act.

7. This Court while protecting applicant Sameer by granting interim protection has in fact observed that involvement of said applicant

in this crime is only on the strength of his median name as Sameer. Having considering the facts involved in this crime; the statutory provisions and settled law relied on for applicants, applications are liable to be allowed. In the circumstances, following order is passed : -

ORDER

- (i) Applicant in Bail Application No.1173 of 2019 registered with Barshi City Police Station, District Solapur shall be released on bail on his executing Personal Bond in the sum of Rs.25,000/- with one surety in the like amount;
- (ii) Interim protection granted to applicants in ABA Nos.771 of 2019 and 816 of 2019 by orders dated 29th March 2019 stand confirmed.
- (iii) All applicants shall attend Investigating Officer, Barshi City Police Station, Solapur initially for a period of one week from 25th April 2019 to 30th April 2019 between 10.00 a.m. to 1.00 p.m. and thereafter as and when called between same time till filing of charge-sheet.
- (iv) Bail Application No.1173 of 2019 is disposed of as allowed.
- (v) ABA Nos.771 of 2019 and 816 of 2019 are disposed of in above terms.

P.N. DESHMUKH, J.