

nsc.

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

CRIMINAL BAIL APPLICATION NO.362 OF 2019

Rakesh Hiloria @Dhobi	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Dilip Mishra, for the Applicant.

Mr.A.A.Palkar, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 13th JUNE, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with Special L.A.C. No.150 of 2018 registered with the Amboli Police Station, Mumbai, for the alleged offences punishable under Sections 8(c) r/w 22 of the Narcotic Drugs and Psychotropic Substances Act. ('N.D.P.S. Act').

3. The principal ground on which bail is sought is that the search was conducted by Police Naik – Pawar, an officer not authorised under the N.D.P.S. Act. Learned Counsel for the Applicant relied on the order dated 24th April, 2017, passed by this Court (Coram:A.S.Gadkari, J.) in Criminal Bail Application No.1051 of 2016 and Criminal Bail Application No.1049 of 2016, in support of his submission.

4. Learned APP does not dispute the fact, that the search was conducted by a Police Naik. He does not dispute the fact, that the said Police Naik had no authorisation to conduct the search.

5. Perused the papers. At the outset, it is pertinent to note that the Notification of the Home Department dated 14th November, 1985 sets out the officers who are empowered under Section 42 of the N.D.P.S. Act for purposes of sub-section (1) of Section 42. A perusal of the said Notification shows that all police officers above the rank of Head Constable in the State of Maharashtra have been empowered for the purposes of Section 42(1) of the N.D.P.S. Act. It is not in dispute that trap was laid on receipt of secret information and that in the search, 1 kg 5 gms of *heroin*

was recovered from the applicant. The search admittedly was conducted by Police Naik – Pawar of Amboli Police Station. It is evident from the Notification that Police Naik – Pawar is not an officer empowered in terms of Notification dated 14th November, 1985. Thus, *prima facie*, there is a clear breach of Section 42(1) of the N.D.P.S. Act. In the facts, having regard to the aforesaid, there is reason to believe that the accused is not guilty of the offence with which he is charged. It is also informed that the applicant has no antecedents. Taking into consideration, the available record, there is reason to believe that the applicant is not likely to commit an offence punishable under the N.D.P.S. Act.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Monday of every month, between 10:00 a.m. to 11:00 a.m., till the

conclusion of the trial;

iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall co-operate in the conduct of the trial;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

viii) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the

prosecution would be at liberty to file an application seeking cancellation of bail.

7. The Application is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.