

Anand

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

BAIL APPLICATION NO. 541 OF 2019

Nafor Igwe Chima

.Applicant

Vs.

The State of Maharashtra

.Respondent

Ms Lochan Chandka, Advocate, for the Applicant
Mrs. P. P. Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 23.09.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 74 of 2017 registered with the Vashi Police Station, Navi Mumbai, for the alleged offences punishable under Sections 8(C), 22 & 29 of the Narcotics, Drugs And Psychotropic Substances Act (for short 'NDPS').

3. Learned counsel for the Applicant relies on the order dated 08.02.2016 passed by this Court (Coram : A. S. Gadkari, J.) in B. A. No. 2105 of 2015. She submits that this Court, in the said case, had released the Applicant therein on bail, as there was non-compliance of Section 50(1) of the N. D. P. S. Act.

4. Learned APP is unable to distinguish the said order.

5. Perused the papers. On 16.02.2017 at around 9.30 p. m., on the basis of specific information that there was going to be dealing of Mephedrone, a trap was laid and the Applicant was apprehended with 51 grams of Mephedrone and 212 grams of Ephedrine. The information received by the police was that a Nigerian national was going to visit Amit Sagar Society, Sector – 10A, Vashi, Navi Mumbai on 17.02.2017 at 1:00 – 1:30 a. m., for illegally selling Mephedrone and Ephedrine to his customers. In the trap, the police accosted the Applicant. Police Inspector – Chetan Kakade disclosed his identity to the Applicant that he was a Gazetted officer and thereafter, informed the Applicant whether he would like to be searched by any other officer or a Magistrate. Thereafter, the police took search and the Applicant was found in possession of 51 grams of Mephedrone (psychotropic substance) and 212 grams of Ephedrine (controlled substance). A perusal of the panchanama shows that the Police Inspector – Chetan Kakade had disclosed that he was a Gazetted officer and after disclosing the same, asked the Applicant, whether he would like to be searched by any other officer or a Magistrate.. The said appraisal under Section 50(1) of the NDPS Act, prima facie, appears to be contrary to the ratio laid down by the several Judgments. It is noted by this Court

(A. S. Gadkari, J.) in the order dated 08.02.2016 passed in B. A. No. 1145 of 2015, that the moment the police officer informs the Applicant that he is a Gazetted officer and then apprises the accused of his right to be searched by other Gazetted officer or a Magistrate, the provision of Section 50(1) of the NDPS Act is violated. The Applicant has no antecedents. Investigation is complete and charge-sheet is filed. In the facts, the Applicant has made out a case for being enlarged on bail. Accordingly, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 50,000/-** with one or two local solvent sureties in the like amount;
- (ii) The Applicant shall not leave the jurisdiction of Mumbai / Thane till the conclusion of the trial;
- (iii) The Applicant shall report to the investigating officer of the concerned police station on the **first Saturday of every month** between **10.00 a. m. and 1.00 p. m.** till the conclusion of the trial;
- (iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) 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 Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The Applicant to co-operate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vii) The Applicant shall file an undertaking with regard to Clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there are two consecutive defaults either in attending the police station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

6. The Application is allowed in the aforesaid terms and is accordingly disposed of.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

(REVATI MOHITE DERE, J.)