

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

BAIL APPLICATION NO. 621 OF 2019

Surendrapal Surjitsingh Rai

...Applicant.

Vs.

The State of Maharashtra

...Respondent.

Mr. Ayaz Khan for Applicant.

Mr. A.R.Kapadnis, APP for State.

CORAM : P.N. DESHMUKH, J.

DATE : 26th April, 2019

PC :

1. Accused involved in CR No.319/2018 registered with Panchavati Police Station, Nashik has filed this application for bail.
2. Heard learned counsel for applicant and learned APP. Perused the copy of charge sheet filed with application. At the out set, learned counsel for applicant submitted that, in spite of fact that, mandatory provisions of Section 50 of the NDPS Act, 1985 (hereinafter referred to as "Act") are attracted, same are not complied in the present case. It

is further contended that, though total quantity of poppy straw involved in the crime is about 70 kg 750 gms, as recovery of 18 kg 400 gms of contraband substance is alleged to be recovered from residential premises of applicant, stringent provisions of Section 37 of the NDPS Act are not attracted so far as applicant is concerned, as the quantity of aforesaid contraband substance is below commercial quantity.

3. In the light of above facts by referring to the contents of panchanama, it is submitted that since personal search of applicant was obtained without apprising applicant of his right to search and as the officer introduced himself to be Gazetted Officer of the team and subjected applicant for his search, it is contended that procedure followed is totally contrary to the statutory provisions. It is therefore submitted that, as there is total non compliance of mandatory provisions of the Act, there is no purpose to keep the applicant behind the bar pending trial.

4. Learned APP by referring to documents filed along with charge sheet submitted that, in fact, applicant was apprised of his right to search by issuing written communication and referred to one such

document on record. However, mere perusal of said document reveals same to be contrary to the provisions of Section 50(1) of Act, as in this document relied by prosecution, it is stated that officer of raiding team being Gazetted Officer if applicant wants his personal search to be obtained by some independent Gazetted Officer or Magistrate. The contents of this communication, as such, cannot be said to be what is contemplated by the statute as what is required to be established is that before obtaining personal search of accused, he is required to be apprised of his right of search, to be obtained in the presence of Gazetted Officer or Magistrate, and no personal search as such can be obtained by any officer of the team who is a Gazetted Officer, however, in the case in hand, prima facie, it is found that what was apprised to accused of his right to have search was not before the independent Gazetted Officer or Magistrate but was informed that officer of the team was a Gazetted Officer to which applicant appears to have agreed and was thus, subjected to personal search. However, no contraband substance or drug was found in his personal search but on obtaining his house search 18 kg 400 gms of poppy straw was found

stored in his house which came to be seized.

5. In that view of the matter and since according to panchanama it is also found that applicant's involvement is based on statement of co accused, when his house came to be visited by the members of raiding team and his personal search and his house search was obtained on suspicion, application is also liable to be allowed on this count. In the circumstances, as there is non compliance of above mandatory provisions and since there are no criminal antecedents against the applicant as stated by learned APP, application is allowed by imposing following conditions as per order below.

ORDER

- a) Applicant shall be released on bail in CR No.319/2018 registered with Panchavati Police Station, Nashik for the offences punishable under Sections 15(b)(c), 17(b)(c), 18(b)(c) of the NDPS Act, 1985 (now registered into Special Case No.8 of 2018 pending on the file of Additional Sessions Judge, Nashik) on executing PR bond in the sum of Rs.50,000/- with one surety in the like amount.
- b) While on bail, applicant shall attend Panchavati Police Station,

Nashik on first day of each month initially for a period of one year between 10.00 a.m. to 2.00 p.m. and thereafter as and when called between the same time till pending trial.

c) Application stands disposed off.

(P.N. DESHMUKH, J.)