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

CRIMINAL BAIL APPLICATION NO.1966 OF 2019

Zakir Sharifulla Sayyed

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Ayaz Khan, for the Applicant.

Mr.S.V.Gavand, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th AUGUST, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.87 of 2018 registered with the D.C.B, C.I.D. Unit - 10, Mumbai, for the alleged offences punishable under Sections 8(c) r/w 22(c) of the Narcotic Drugs and Psychotropic Substances Act, ('the NDPS Act').
3. Learned Counsel for the applicant states that the name of the applicant was not known and hence the information reduced into writing,

does not mention the applicant's name, however, the information that was sent to the superiors mentions the name of the applicant, thus making the information suspect. He further submitted that there is non-compliance of Section 50 of the N.D.P.S. Act, inasmuch as, what was disclosed to the applicant was that he can be searched either by a Judge (not a Magistrate) or a Gazetted Officer, resulting in complete non-compliance of the provisions of Section 50 of the N.D.P.S. Act.

4. Learned APP is unable to justify, how the name of the applicant is not mentioned in the station diary, though the information sent to the superiors contains the name of the applicant. As far as non-compliance of Section 50 of the N.D.P.S. Act is concerned, he does not dispute that what is stated on page 122 of the application, shows that the applicant was informed that he can be searched either by a Judge or a Gazetted Officer.

5. Perused the papers. According to the prosecution, P.I. Bhoir received a secret information on 5th December, 2018 that one person will be coming in front of R.K.Guest House, near Trauma Care Hospital, Western Express Highway, Jogeshwari (East), Mumbai, between 19:00 to 20:30 hrs to sell contraband to his customers. The said information was reduced into

writing in the station diary by P.I. Bhoir and the same was conveyed to P.I. Shinde. P.I. Shinde conveyed the said information to the superiors, who directed that a raid be conducted under the supervision of P.I. Pokharkar, pursuant to which, a trap was laid and the applicant was apprehended. Section 50 of the N.D.P.S. Act contemplates giving a choice to the applicant to be searched either by a Magistrate or a Gazetted Officer. Thus, *prima facie*, there is non-compliance of Section 50 of the N.D.P.S. Act, inasmuch as, the choice given to the applicant was that he could be searched by a Judge or a Gazetted Officer. Even otherwise, the information received does not disclose the name of the applicant, whereas what was sent to the superiors contained the name of the applicant, *prima facie*, rendering the information suspect. Considering the aforesaid, it is doubtful, whether the applicant is guilty of the offences with which he is charged. The applicant has no antecedents.

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 sureties in the like amount;

- ii) The Applicant shall attend the D.C.B, C.I.D. Unit - 10, Mumbai, on the first Saturday 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 commit similar offence;
- v) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- vi) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;
- vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his

release;

viii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's 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 the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

REVATI MOHITE DERE, J.