

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

CRIMINAL BAIL APPLICATION NO.134 OF 2020

Ganesh Ashok Pathare @ Pathade Applicant

versus

State of Maharashtra Respondent

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- Mr.Anand Jondhale a/w Yashoda Jondhale a/w Sugamrao Jondhale a/w Ajay Jondhale a/w Raj Jondhale a/w Sayed Zahir i/b. Jondhale & Co., Advocate for Applicant.
- Ms.Pallavi Dabholkar, APP for the State/Respondent.
- IO – API D.R.Prabhale, attached to Nagpada Police Station present.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th DECEMBER, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.6 of 2019 registered with Anti Narcotic Cell, on 18/01/2019, under sections 8(C), 22(C) of NPDS Act, 1985.

2. The prosecution case is that on 18/01/2019 PSI Sawant was present in his Ghatkopar Unit. He received a secret

information that the present Applicant was a dealer in Mephedrone (M.D.) and he was to come near Varshanagar Bus stop, Vikhroli Parksite on 18/01/2019 between 11.25 a.m. to 12.25 p.m. The information specifically gave name of the Applicant as well as his description. API Sawant took down that information in writing in the book maintained for that purpose and immediately informed PI Wadhvane, who was present in the office. He in turn informed his superiors. They were told to conduct the raid. Panchas were called. Preparation for conducting raid was made. The police party went to the spot. As mentioned in the information, the Applicant came there. He was accosted. His personal search was carried out after complying with the provisions under section 50 of the NDPS Act. He was found to carry 20 gms of Mephedrone in a plastic bag. He had cash amount with him. Samples were drawn. The Applicant was arrested. On enquiry with him the Applicant told the police party that he had purchased that contraband from one Aslam Merchant, resident of Dongri and the Applicant was about to sell it to his customers. The said Aslam Merchant was also arrested.

3. The investigation was carried out and the charge-sheet was filed. The charge-sheet contains the Panchanama of raid and statements of members of raiding party. It also contains the C.A. report which shows that when the samples were tested, Mephedrone was detected in them.
4. Heard Mr.Anand Jondhale, learned counsel for the Applicant and Ms.Pallavi Dabholkar, learned APP for the State.
5. Submissions -:

The learned counsel for the Applicant canvassed before me only one point. He submitted that the Applicant was actually arrested from Kamran Guest House one day prior to the conduct of the raid. The Applicant tried to get CCTV footage by making proper application before learned Magistrate, but that application was kept pending for a long time and therefore CCTV footage was not available. He submitted that besides the

CCTV footage, he can rely on the CDR showing the Applicant's location at Kamran Guest House. The said guest house is 1 km away from the spot where he was shown arrested.

6. Learned APP opposed this application. She submitted that all the mandatory provisions are complied with. She showed me the signature of the Applicant taken on the document pertaining to compliance of section 50 of NDPS Act. He invited my attention to the date put by Applicant below his signature in that document dated 18/01/2019 i.e. the date on which the raid was conducted and he was arrested. She therefore submitted that there is no substance in the argument of the learned counsel for the Applicant.

7. Reasons -:

I have considered these submissions. As rightly pointed out by the learned APP, the document showing compliance of section 50 of the NDPS Act does bear signature of the Applicant with the date 18/01/2019 in his handwriting. It was taken at

the time of conducting raid. The CCTV footage today is not available in support of the Applicant's defence. The CDR, which the Applicant is trying to rely on, is not conclusive or is not even a prima facie proof that the Applicant was present in Kamran Guest House and from there he was arrested one day prior to conducting of raid. There is no connecting material regarding Applicant's defence with the CDR. Therefore I do not find any substance in this application. The application is rejected.

(SARANG V. KOTWAL, J.)