

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1007 OF 2019

Sabir Hanif Khan

...Applicant/

(Orig. Accused)

V/s.

State of Maharashtra

...Respondent

(Orig. Complainant)

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Mr. Haviulla Kuddas, Advocate for the
applicant.

Mrs. Sharmila Kaushik, APP for State.

API, Mr. Vishal Khaire, ANC, Mumbai present.

CORAM : SANDEEP K. SHINDE, J.

12TH FEBRUARY, 2020.

P.C. :

1. The applicant seeks his enlargement on bail in Crime No. 42/2018 (corresponding NDPS Special Case No. 6 of 2019).
2. Heard respective Counsels.

3. On 27th September, 2019 Officers of the respondent while on patrolling duty, apprehended the applicant on suspicion of possession of contraband by him and the subsequent search of his bag resulted in recovery of 1005 gms of white powder called Mephedrone. The samples were drawn under panchanama at 17:30 hrs and soon thereafter, the crime came to be registered at CP Office for the offences punishable under the Narcotics Drugs and Psychotropic Substances Act 1985 ("NDPS Act" for short).

4. The learned Counsel for the applicant, contended that entire recovery stands vitiated for want of compliance of provisions of Section 50 of the NDPS Act. Nextly, he contended that respondent had planted the contraband on his person, in as much as, the panchanama shows the applicant was apprehended at around 00.45 hrs on 27th September, 2018, however, the statement of pancha revealed that he was approached by a Constable to act as a panch at 11:20 hrs of 27th

September, 2019. Counsel, therefore submitted that, this material irregularity goes to the root of the case and vitiates the recovery.

5. It is settled law that, words "search of any person" occurring in sub-section (1) of Section 50 of the Act, would mean a human being with appropriate covers, clothings including footwear and therefore a big briefcase or any such article, may under no circumstance, be treated to be found on his own person. Besides, this being a case of chance recovery of a commercial quantity effected in course of regular patrolling, it was not necessary to follow the provisions of Section 50 of the NDPS Act. It may also be stated that, as far as Section 50 and chance recovery is concerned, the issue is no longer *res-judicata* in view of the decision of the Constitution Bench in **State of Punjab V. Baldev Singh, reported in (1999) 6 SCC 172**. Besides, alleged discrepancies in panchanama relating to timing of panchas, while drawing the panchanama are trivial in nature.

6. In view of the facts of the case and since the offence is involving commercial quantity, the Bail Application is rejected.

7. It is made clear that observations made hereinabove shall be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)