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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 397 OF 2021**

SANDE JOSEPH CHUKAVU

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Mr. Advait Tamhankar advocate for the applicant

Mr. A. R. Kapadnis APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: 21st OCTOBER, 2021.

P.C.:

1] Applicant suffered arrest on 13/11/2019 in C.R. No. 1283/2019 registered with Tulinj Police Station for offence punishable under Sections 8(c), 21(c) of the Narcotics Drugs and Psychotropic Substances, Act 1985 (Hereinafter referred to as 'the Act' for the sake of brevity) and Sections 12(1) (A) (b) of the Passport Act, 1967 and under Section 14 of the Foreigners Act, 1946 .

2] Prosecution case is, on 13/11/2019, contraband in intermediate quantity of banned substance is seized from the custody of the applicant.

3] Submissions of learned counsel for the applicant are, non compliance of Sections 50 and 42 of the Act which is mandatory can be inferred from the record. He would invite attention to the copy of F.I.R. dated 14/11/2019 so also copy of Panchanama dated 13/11/2019. Apart from above, it is brought to my notice that F.I.R. though is lodged on 14/11/2019, seizure is shown on 13/11/2019 whereas F.I.R. speaks of a raid carried out in the morning of 14/11/2019. As such, it is claimed that mandatory provisions of the Act are not complied.

4] Learned APP while opposing the prayer for bail would urge that compliance of Section 50 of the Act can be inferred from the intimation letter dated 13/11/2019 signed by the accused. It is claimed that accused has failed to exercise his option to be searched before the Magistrate or other gazetted officer. Learned APP would urge that issue of seizure on 13/11/2019 and raid on 14/11/2019 can be looked into at the trial stage as it is premature to appreciate the same.

5] Considered rival submissions.

6] From the available record, particularly, charge-sheet, it is apparent that raid claimed to have been carried out in the early morning of 14/11/2019 whereas contraband is shown to have been seized on 13/11/2021 i.e. a day before. Apart from above, plea of absence of authorization under Section 42 of the Act also holds substance. Authorization as contemplated in law, is not reflected on record as required under Section 42 of the Act.

7] Complainant, a police sub-inspector carried out the raid under the physical supervision of Senior P.I. of the police Station who introduced himself to the accused as the gazetted officer. Said fact can be prima facie inferred from the contents of the raid Panchanama so also F.I.R.

8] As mandatory statutory compliances are not noticed, case for grant of bail is made out.

(i) Applicant be released on bail in C.R. No. 1283/2019

registered with Tulinj Police Station for offence punishable under Sections 8(c), 21(c) of the Narcotics Drugs and Psychotropic Substances, Act 1985 (Hereinafter referred to as 'the Act' for the sake of brevity) and Sections 12(1) (A) (b) of the Passport Act, 1967 and under Section 14 of the Foreigners Act, 1946 upon furnishing P.R. bond in the sum of Rs. 50,000/- with one or more local sureties in the like amount.

(ii) Applicant shall neither influence the prosecution witnesses in any manner nor tamper with the evidence.

(iii) Applicant shall report to the concerned police station on every alternate day till his prayer for issuing valid visa is processed.

9] Counsel for the applicant undertakes that the applicant will approach Foreigners Regional Registration Office (FRRO) within four weeks from the date of his release for the purpose of issuance of appropriate Visa.

10] Application stands disposed of.

[NITIN W. SAMBRE, J.]