

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

CRIMINAL BAIL APPLICATION NO.2054 OF 2021

Gangam Sudhir Kumar Reddy	..Applicant
Versus	
State of Maharashtra	..Respondent

Mr. Elwish Edward a/w Mr. Omkar Hase i/by Annie Fernandez,
Avocates for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

Mr. Nilesh Bhalerao, PSI, ANC Ghatkopar Unit, Crime Branch
Mumbai – present.

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd NOVEMBER, 2021

PC.

1. Applicant is seeking regular bail in Crime No. 46 of 2019 registered with Anti-Narcotics Cell, Ghatkopar Unit for the offence punishable under Sections 8(c) r/w Section 20(c) and 29 of the NDPS Act.

2. Commercial quantity of contraband was recovered from the vehicle which is owned by the wife of the applicant in which the applicant along with co-accused was travelling.

3. The submissions of the counsel for the applicant are, non-compliance of Section 50 of the NDPS Act is on the face of the

record as the applicant understands Telugu language whereas the communication was made in Hindi which language was not known to the applicant.

4. The prayer is opposed by the learned APP contending that there is sufficient compliance of Section 50 of the NDPS Act.

5. Considered submissions.

6. Admittedly, (though not from the personal possession of the applicant) commercial quantity of Ganja was recovered from the vehicle which is owned by the wife of the applicant. Applicant and co-accused were travelling in the said vehicle when the contraband in commercial quantity was seized.

7. As far as the compliance of Section 50 is concerned, Panchnama drawn on 6th July, 2019, apparently speaks of communication/intimation of statutory right of the applicant under Section 50 of the NDPS Act viz. applicant has right to first search the officer or else can get himself searched before the Gazetted Officer or a Magistrate and if not by the Police Inspector.

8. A defence is raised by the counsel for the applicant that the applicant knows only Telugu as he is permanent resident of Hyderabad. He claims to be businessman having business of Tours and Travels and as such there was no effective communication of his right to know about statutory safeguards.

9. He has drawn support from the judgment of the Apex Court in the matter of *Arif Khan @ Agha Khan Vs. State of Uttarakhand* so as to substantiate his contention.

10. This Court must appreciate that what was found from the custody of the applicant is, commercial quantity of contraband. The contention depicts that applicant was communicated about his statutory rights under Section 50, in Hindi. However, at this stage, he has come out with a case that he does not understand Hindi. Once the applicant has claimed that he is conducting Tours and Travels business, the basic requirement of a person carrying out such business is acquaintance of the language and communication skills. The applicant was communicated about his right in Hindi which is National language. Applicant was apprehended from Mumbai. The fact that applicant was carrying out business of Tours and Travel, prompts this Court to believe at this stage that he must be aware about the topography and signals of the local language. As such, it can be presumed at this stage that the applicant was aware about Hindi language in which he was communicated about his right under Section 50 of the Act. Fact remains that in bail application of the applicant, his limited knowledge about Telugu language cannot be appreciated at this stage, as the said defence can be looked into at the stage of trial.

11. Section 50 provides for conditions under which search of a person shall be conducted. The contraband recovered in the case

in hand is not from the person of the applicant but from the bag which he was carrying and also the dickey of the four wheeler in which he was travelling. Admittedly, it is an undisputed proposition of law that safeguards under Section 50 are available only for search of a person and not for any other purpose. The said provision is incorporated for the purpose of providing safeguard to the accused against the possibility of false involvement. The Act carries a stringent punishment. As such, the Supreme Court has held that the procedure laid down in Section 50 has to be meticulously followed. This section is incorporated with an intention to give credibility to the search and seizure empowered by the officers. The law laid down by the Apex Court in the matter of *Ajmer Singh Vs. State of Haryana* reported in *2010(3) SCC 746* is worth relying.

12. That being so, no case of grant of bail is made out.

13. Application as such stands rejected.

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[NITIN W. SAMBRE, J.]