

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

938 BAIL APPLICATION NO.366 OF 2022

Aarif Shah Salim Shah

Age: 33 years, Occ.: Labourer,

R/o. Haji Nagar, Gajanan Colony,

Tq. & Dist.Dhule.

..Applicant

VERSUS

The State of Maharashtra

Through Chalisgaon Road Police Station,

Dist.Dhule.

..Respondent

...
Advocate for Applicant : Mr. Chaitanya C. Deshpande
APP for Respondent : Mr.B.V.Virdhe

...
CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 12th April, 2022

ORDER :-

1. Present application has been filed under Section 439 of the Code of Criminal Procedure.
2. Applicant has been arrested on 13th January, 2022 in connection with Crime No.0011 of 2022, registered with Chalisgaon Road Police Station, District Dhule, for the offence punishable under Sections 328, 276 of the Indian Penal Code (IPC) and under Sections 8 and 22 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as "the NDPS Act").

3. Heard Mr.Chaitanya C. Deshpande, learned Advocate for the applicant and Mr.B.V.Virdhe, learned APP for the respondent. In order to cut short, it can be stated that both of them made submissions in support of their respective contentions.

4. Learned Advocate for the applicant is mainly relying on the point that there is no compliance of Section 50 of the NDPS Act as the option was not given to the applicant that whether the search can be done before a Gazetted Officer or a Magistrate. He relies on the decision of this Court in *Sholadoye Samuel Joy Vs. The State of Maharashtra in Criminal Bail Application No.2295 of 2021* dated 20th January, 2022, wherein this Court has held that the requirements of Section 50 of the NDPS Act are mandatory and therefore, the provisions of Section 50 of the NDPS Act must be strictly complied with.

5. It will not be out of place to state that learned APP for the respondent has strongly submitted that the applicant was possessing four bottles of various names but they are the narcotic drugs and thereafter, he had taken the raiding party to the house of accused No.1. Therefore, there is ample evidence against the applicant.

6. The main point that is required to be considered here is as

to whether there is compliance of the mandatory provisions of the NDPS Act or not. In *Sholadoye Samuel Joy* (supra) the pronouncements of decisions of the Hon'ble Apex Court have been considered especially in *Vijaysinh Chandubha Jadeja Vs. State of Gujarat [(2011) 1 SCC 609]* and the earlier catena of judgments wherein it has been held that the compliance of provisions of Section 50 of the NDPS Act is mandatory and the provisions should be strictly complied with. If we consider the FIR, Panchanama and the statements of the witnesses, what we can get is that there were Police persons as well as two Panchas were present. None of them was a Gazetted Officer but at the said spot the person of the applicant was searched and it is stated that four bottles of the scheduled drugs were found. Therefore, on the face of the record, it can be stated that the option was not given to the applicant before conducting his personal search that it would be before either a Gazetted Officer or a Magistrate. *Prima-facie*, there is no compliance of Section 50 of the NDPS Act and therefore, applicant deserves bail.

ORDER

- i) The Application stands allowed.

ii) The Applicant - Aarif Shah Salim Shah be released on bail in connection with Crime No.0011 of 2022, registered with Chalisgaon Road Police Station, Dist.Dhule, for the offences punishable under Sections 328, 276 of the IPC and 8 and 22 of the NDPS Act, on P.R.Bond of Rs.50,000/- (Rs. Fifty thousand only) with two solvent sureties of Rs.25,000/- each.

iii) The applicant shall not indulge in any criminal activity and shall not tamper with the prosecution evidence in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT