

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1670 OF 2022

SUMIT SANTOSH KASLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Prashant Giri
APP for Respondent : Ms. V. S. Choudhari
...

CORAM : S. G. MEHARE, J.

DATE : 09-11-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State at length.
2. Soon after apprehension, the police physically searched the applicant and narcotic drug was found in his possession. The police recovered the narcotic drugs as mentioned in the first information report. Since the day of his arrest, he is behind bar.
3. The applicant has specifically claimed bail on the ground that section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after, referred to as "NDPS Act") has not been strictly complied with. To buttress his arguments, the learned counsel for the applicant relied on the following cases :-

(1) *Vijaysinh Chandubha Jadeja Versus State of Gujarat,*
(2011) 1 Supreme Court Cases 609,

(2) *Arif Khan Alias Agha Khan Versus State of Uttarakhand*, (2018) 18 Supreme Court Cases 380, and

(3) *Sholdoye Samuel Joy Versus State of Maharashtra*, (2022) 2 AIR Bom R (Cri) 13.

4. Relying on the above case laws, he would argue that the police did not strictly comply with the Section 50 of the NDPS Act. Barely intimating the accused that he may get searched in the presence of a Gazetted Officer or a Magistrate, is not strict compliance. Mandatory procedure as required in law if not followed is fatal to the prosecution case; hence, he may be released on bail.

5. The learned A.P.P. has strongly opposed the application contending that the contents of the first information report reveal that the applicant was well informed that he may get searched before a Gazetted Office or a Magistrate. So, it cannot be said that it was non-compliance of Section 50 of the NDPS Act. The offence is serious. The huge quantity of narcotic drugs were recovered from applicant. The applicant was selling narcotic drugs in the locality where the young boys and girls used to go for coaching and tuitions. Hence, the applicant may not be released on bail.

6. As far as the non-compliance of Section 50 of the NDPS Act is concerned, the Honourable Supreme Court, in the case of *Vijaysinh Chandubha Jadeja (supra)* has held that the requirement of Section 50 of the NDPS Act are mandatory, and therefore, the

provisions of Section 50 must be strictly complied with. It is imperative on the part of police officer to apprise the person intended. It is searched of his right under Section 50 of the NDPS Act to be searched “only” before a gazetted officer or a Magistrate. It was also held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is further held that the suspect may or may not choose to exercise the right granted to him under Section 50 of the NDPS Act, but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. The said view has been followed by the Honourable Supreme Court in the case of *Arif Khan Alias Agha Khan (supra)*, and by this Court in the case of *Sholdoye Samuel Joy (supra)*.

7. The law has been clearly laid down that it is imperative on the part of the police officer and an obligation is cast upon him to apprise the suspect to have his physical search only in the presence of a Gazetted Officer or a Magistrate.

8. The first information report reveals that after apprehending the applicant, the police informed him that he may get searched in presence of a Gazetted Officer. However, the accused told the

police that they may take his search in the presence of panchas and Drug Inspector. *Prima facie*, it reveals that the Investigating Officer failed to comply with the provisions of Section 50 of the NDPS Act, which is imperative. In view of the law laid down by the Honourable Supreme Court, the applicant has good case for bail. Hence, the following order :-

- i) The application is allowed.
- ii) Applicant Sumit s/o. Santosh Kadle be released on bail, on furnishing PB and SB of Rs.1,00,000/- with one or two solvent sureties of the like amount, in C.R.No. 0374 of 2022 registered with Shivaji Nagar Police Station, District Latur, for the offence punishable under Sections 276, 328, 336, 403, 406, 420 of the Indian Penal Code and Sections 8(c), 21, 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 18(A), 18(C), 8(c), 27(a), 27(3) of the Drugs Cosmetics Act, 1940, on the conditions that,
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall co-operate with the investigation and trial.
 - (c) He shall not involve in the similar crime in future.
 - (d) If he is found involved in the similar crime, the prosecution is at liberty to move the application for cancellation of bail application.
 - (e) He shall not leave the place of his residence without leave of the court till the conclusion of the trial.
- iii) Needless to state that the observations are restricted to this bail application.

**(S. G. MEHARE)
JUDGE**