

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 BAIL APPLICATION NO.1928 OF 2022

Nandabai W/o Umeh Pawar
Age : 55 years, Occ : Labour,
R/o Sathe Nagar, Waluj,
Tq. Gangapur, Dist. Aurangabad.

..APPLICANT

-VERSUS-

The State of Maharashtra
Through Police Inspector,
Police Station, Waluj,
Tq.Gangapur, Dist. Aurangabad.

..RESPONDENT

...
Mr.S.G. Kawade, advocate for the applicant.
Mr.S.B. Narwade, APP for the respondent/State.

...
CORAM : S.G. MEHARE, J.
DATE : DECEMBER 07, 2022

PER COURT :-

. Heard learned counsel for the applicant
and learned APP for the respondent/State.

2. The Police laid the trap in the house
of the applicant and seized 4 kg 536 grams of
cannabis. The learned counsel for the applicant
submits that the raid held itself is illegal. The
applicant was not apprised of her right under
section 50 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (For short, N.D.P.S. Act").
Hence the seizure is illegal. That apart, no raid
as such was conducted, and nothing was seized

from the applicant.

3. Learned A.P.P. would submit that the written notice was served upon the applicant, as required under section 50 of the N.D.P.S. Act. She denied the role attributed to her. Hence the search was conducted, and contraband, i.e. cannabis, was seized. He also argued that in the F.I.R. it had been written that the raiding Officer introduced herself to the accused and told her that the Scientific Officer was Gazetted Officer if she wanted to get herself searched in the presence of another Magistrate or Gazetted Officer and a letter was served upon her; however, she told that it is not necessary.

4. Law has been well settled that the compliance of section 50 of the N.D.P.S. Act is not a mere formality. It is mandatory. By catena of judgments, it is cleared that it is imperative on the part of the police officer to apprise the person intended to be searched of his right under section 50 of the N.D.P.S. Act to be searched only before a Gazetted Officer or a Magistrate. A perusal of the contents of the F.I.R. and the so-called letter claimed to be the compliance with section 50 of the N.D.P.S. Act does not reveal that the applicant was apprised of her right under section 50 of the N.D.P.S. Act. Hence it cannot be accepted that there was compliance as

prescribed under section 50 of the N.D.P.S. Act. Arguments of the learned APP that there were many crimes to discredit may not be considered as in this case, since the mandatory provisions of section 50 of the Act has not been complied with. Hence, the application deserves to be allowed. Hence the following order:-

ORDER

- (i) The application is allowed.
- ii) Applicant be released on bail, on furnishing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount, in C.R.No.0319/2022 registered with the Police Station Waluj, Tq.Gangapur, Dist. Aurangabad under section 20(b) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the condition that the applicant shall attend the Police Station every Tuesday between 11:00 a.m. to 1:00 p.m. till filing the charge sheet, and shall not involve in the similar crime

(S.G. MEHARE, J.)