

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1459 OF 2021**

Nazir Maqsud Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

**WITH
BAIL APPLICATION NO.2073 OF 2021**

Abdul Parvez Alam Jamil Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Ashok Mundargi Senior Adv, h/f Adv Ayaz Khan in BA No. 1459 of 2021 for the applicant.

Mr. Ayaz Khan a/w Mr. Dilip Mishra for the applicant in BA No.2073 of 2022.

Mr. Deshmukh, API Kashimira, Police Station.

**CORAM: BHARATI DANGRE, J.
DATED : 14th OCTOBER, 2022**

P.C:-

1. Heard learned Senior counsel Mr. Ashok Mundargi in Bail Application No.1459 of 2021 and Mr. Ayaz Khan in Bail Application No. 2073 of 2021 for the applicants.

Both the applicants face charge in CR. No. I-958 of 2020, which accuse them of committing an offence punishable under section 8(C) read with section 21(C) of the NDPS Act. The prosecution case which would be discerned through the charge-sheet placed on record allege that complainant Mr. Praveen Swami Police Officer attached to crime branch Unit-I Mira

Bhayander received direction from Senior P.I, that patrolling constable found a scooter in suspicious condition alongwith its riders. When the complainant reached the spot and confronted with two persons they gave evasive answers and the complainant got suspicious that they must be carrying drugs. Thereafter two panch witnesses were secured and the complainant proposed to search the two persons after serving a notice under section 50 of NDPS Act.

The search lead to two plastic bags containing white brownish powder from Nazir Shaikh and another plastic bag with white brownish powder from Abdul Parvez. It was discovered that the powder was Mephedrone. A panchnama was conducted and on weighing the MD powder in possession of Nazir was found to be 100 gms whereas Abdul was found in possession of 100 gms plus 50 gms of pouches. Samples were drawn from the powder seized and by following the procedure the plastic bags were seized.

2. A complaint was lodged with Kashimira Police Station against the two accused persons.

3. My attention is invited to the complaint and the panchnama that is drawn.

The panchnama in form of search panchnama dated 14/12/2020 mention that both the accused persons were issued notice under section 50 and Assistant PI Vilas Kute and Praveen Swami the API carried out the personal search of both the accused which lead to seizure of Mephedrone.

When the panchnama is carefully read, it record that the panchanama was prepared as per directions of Assistant PI and it was read over to both the panchas and the two persons, who were taken in custody. The contents of the panchnama were read over to them and one copy of the panchnama was delivered to one women and her signature was taken. It is mentioned that a notice was issued to the women accused under section 50 of the NDPS Act.

4. The aforesaid contents of the panchnama make no sense as neither there was a women pancha nor any of the accused is a women. The aforesaid recording merely reflect the total non-application of mind.

Apart from this the notice is issued under section 50 is also placed on record as a part of the charge-sheet and it record that the accused is appraised of his right to be searched by a Magistrate or before a Gazetted Officer and if they desire so, the name and address of the Gazetted Officer was to be provided by the accused, so that he can be called and in his presence the search can be effected. The said document at the bottom on the left side bear the signature of the two accused persons without any endorsement to the effect that they have chosen to avail the said right or has preferred to be searched by the officers, who were present on the spot.

5. The aforesaid lacunae is argued to be a clear infraction of section 50 of the NDPS Act. Pertinent to note that the intimation under section 50 of NDPS Act do not make a reference to the intimation given in front of the panchas nor do the intimation

bear the signature of the panchas. The net effect of the entire procedure followed, clearly violate the mandate of section 50. The position of law as regards the importance and imperative nature of seizure to be carried out in the manner prescribed under section 50 has been well settled by the Constitution Bench of the Hon'ble Apex Court in case of *State of Punjab Vs. BaldevSingh*, AIR 1999, SC 2378, where, it has been held that it is mandatory to inform the person concerned of his right under subsection (1) of section 50 of the Act, of being taken to the nearest Gazetted Officer or nearest Magistrate for effecting the search. The failure to inform the concern about existence of such a right would cause serious prejudice, though it has been held that it will not render the recovery of the illicit article suspicious and vitiate the conviction, but it would be construed as violation of mandatory condition imposed under section 50.

6. The entire purpose of the statutory mandate contemplated under Section 50 is well settled by this time and what could be the impact of it's non-adherence would be determined at the time of trial. However, while considering the application of the applicant for being released on bail, the Court has to be satisfied about the existence of reasonable ground that he is not guilty of such offence and he is not likely to commit any offence, while on bail. The non-adherence of the imperative mandate and an attempt on part of the prosecution to improvise it's case by compiling the documents, without the signatures of the panchas, make me to believe that there are no reasonable grounds to hold that the applicants are guilty of offence. Further, in absence of

any antecedents, I have reasonable ground to believe that there is any likelihood of committing the offence, while being released on bail.

Hence the applicants are entitled to be released on bail.

7. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present applications and the learned Judge trying the applicants for the offences with which they are charged, shall not get influenced by the above observations, in any manner.

: ORDER :

- (a) Application is allowed.
- (b) Applicant – Nazir Maqsud Shaikh, and Applicant- Abdul Parvez Alam Jamil Shaikh shall be released on bail in connection with C.R.No. I-958 of 2020 registered with Kashimira Police Station on furnishing P.R. Bond to the extent of Rs.50,000/- each with one or two sureties in the like amount.
- (c) The applicants shall mark their attendance before the concerned police station on first Monday of every month between 10:00 a.m to 12:00 noon till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him

from disclosing the facts to Court or any Police Officer. The applicants shall not tamper with evidence.

(e) On being released on bail, the applicants shall give their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)