

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2815 OF 2021

Manoj Kumar Jayprakash Yadav ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr. Ayaz Khan, for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent / State.

CORAM : C.V. BHADANG, J.
DATE : 15 MARCH 2022

P.C.

. By this Application, the Applicant (Accused No.1) is seeking release on bail, in Crime No.171/2020 of Police Station Nashik Road, Nashik City, under Section 8(c) r/w. 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. The prosecution case as disclosed from the FIR dated 6 March 2020 lodged by API Abhijeet Narayan Sonawane, attached to Crime Branch, Nashik, shows that on a prior information, the Applicant and the co-accused Nos.2 and 3 (Accused Nos.2 and 3 had subsequently come on the spot) were intercepted in front of Yesubai

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Bhosale Garden at Pathardi Phata, Nashik in which 896 gms of cocaine was recovered from the Applicant. The raiding officer, Senior PI Dinesh Bardekar has conducted the search after apprising the Applicant of the requirement of Section 50 of the NDPS Act. Three samples were drawn from the contraband and they are marked as AS-1, AS-2 and AS-3, out of which only AS-1 was sent to the Chemical Analyst. The Chemical Analyst had found the sample containing 'Benzoylecgonine a derivative of cocaine'. Upon completion of investigation, the chargesheet is filed.

3. I have heard the learned counsel for the parties. Perused record.

4. The learned counsel for the Applicant submitted that there is non compliance with the provisions of Section 50 of the NDPS Act, in as much as (i) the Applicant and the co-accused were not informed of their "right" to be searched in the presence of the Gazetted Officer (ii) that there was a joint appraisal to the accused which is in breach of Section 50 of the NDPS Act there was no independent appraisal and (iii) the raiding officer had informed the Applicant and the co-accused Nos.2 and 3 that he himself is the Gazetted Officer thereby diluting the right under Section 50 of NDPS Act as held by the Supreme Court in the case of *State of*

Rajasthan Vs. Parmanand & Anr. ¹. It is also submitted that the samples have not been drawn by the learned Magistrate as required by Section 52 of the NDPS Act as held by the Supreme Court in the case of *Union of India Vs. Mohanlal & Anr.* ². It is submitted that although the sample marked as AS-3 was produced before the learned Magistrate, the sample sent to the Chemical Analyst is shown to be AS-1 which is again in breach of the statutory provisions. The learned counsel for the Applicant submitted that the Applicant has no criminal antecedents against him.

5. The learned APP has submitted that there is substantial compliance with the requirements of Section 50 of the NDPS Act and the question whether there is proper compliance in the context of the submissions made on behalf of the Applicant, can be gone into at the time of trial. It is submitted that commercial quantity of *cocaine* has been recovered from the possession of the Applicant and therefore, rigours of Section 35 and 37 of the NDPS Act would apply and therefore Applicant is not entitled to be released on bail.

6. I have considered the circumstances and the submissions made.

¹(2014) 5 SCC 345

² (2016) 3 SCC 379

7. Perusal of the statement of PI Dinesh Bardekar who is a raiding officer which is recorded on 8 March 2020 shows that the Applicant alongwith co-accused Nos.2 and 3 were together and jointly informed that there is a 'provision' for their personal search in the presence of any other "Gazetted Officer". It further indicates that the raiding officer had informed the Applicant that he himself is the Gazetted Officer. At least, *prima facie*, it is not shown that the Applicant and co-accused Nos.1 and 2 were informed individually that they have a 'right' to be searched in the presence of the Gazetted Officer. The legal position in this regard is no longer *res integra* as it is covered by several decisions of the Supreme Court as well as orders passed by the coordinate Bench of this Court. It is not necessary to multiply authorities on the point. The Supreme Court has dealt with these provisions and effect of their breach, in order dated 18 September 2015 in *Gurnam Singh @ Gagan Vs. State of Punjab* in Special Leave to Appeal (Cri.) No.4590/2015. The Supreme Court placing reliance on the decision in *Parmanand* and in particular, the conclusions drawn in paragraph 19 thereof, has found that the Accused therein was entitled to be released on bail.

8. Learned APP submitted that in the seizure panchanama and the FIR, there is no mention that the Applicant was informed that one of the members of the raiding party is the Gazetted Officer.

9. However, *prima facie*, I find that there are statements of Panchas as well as the Complainant to indicate that the Applicant was so informed that one of the members of the raiding party is a Gazetted Officer. The learned counsel has produced orders of the coordinate Bench in *Afaqee Asif Sayyed Vs. State of Maharashtra*³, *Junaid Akhtar Qureshi Vs. The State of Maharashtra*⁴ and *Nafis Rafi Ahmed Shaikh Vs. The State of Maharashtra*⁵, in which on account of similar breach of Section 50, this Court has granted bail to the Applicant / Accused therein.

10. The record also discloses that the sample marked as AS-3 was allegedly opened and resealed before the learned Magistrate. However, the samples sent to the Chemical Analyst is marked as AS-1.

11. In such circumstances, I find that the Applicant is entitled to be released on bail. Hence, the following order.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Manoj Kumar Jayprakash Yadav, be released on bail in Crime No.171/2020 of Police Station Nashik Road, Nashik City, on executing

³ BA No.1145/2015 dated 22/12/2015

⁴BA No.1645/2017 dated 13/2/2018

⁵BA No.173/2018 dated 4/7/2018

a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties, in the like amount, out of which at least one should be a local surety.

(iii) The Applicant shall undertake to remain present before the learned Special Judge during the course of trial, unless exempted.

(iv) The Applicant shall file his permanent native place residential address alongwith proof to the satisfaction of the learned Special Judge.

(v) The Applicant shall not directly or indirectly make any attempt to tamper with the prosecution evidence or witnesses.

(vi) The Applicant shall not indulge into any similar offence, while on bail.

C.V. BHADANG, J.