

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4451 OF 2021

Wasim Wajir Shaikh

..Applicant

V/s.

The State of Maharashtra

..Respondent

Ms. Zehra Charania i/b. Mr. Ayaz Khan, for the Applicant.
Mr. Y. Y. Dabke, APP for the Respondent/State.

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**CORAM : C.V. BHADANG, J.
DATE : 22 MARCH 2022**

P.C.

. By this Application, the Applicant (Accused No.1) is seeking release on bail in Special Case No.130/2020 arising out of Crime No.323/2020 of Police Station Bhadrakali, Nashik, under Section 188 of the IPC and Section 8(c), 20(b) r/w. 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. The prosecution case as disclosed from the complaint dated 4 July 2020 lodged by Police Constable Anil Bhagwat Shinde, is that on 4 July 2020 during the course of regular patrolling, the Applicant and the Accused No.2 Ajay Garud were intercepted

while proceeding on a motorcycle at about 9.30 p.m. near Khadkali Signal, by the side of Mahadev Furniture shop at Nashik. It is the material case that during their personal search, 240 gms of *charas* was recovered from the possession of the present Applicant. The raiding officer had conducted the search after compliance with Section 50 of the NDPS Act. On completion of investigation, a chargesheet is filed.

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

4. It appears that Accused No.2 Ajay Garud has been released on bail by the learned Special Judge at Nashik as per order dated 10 December 2021 in Special Case No.130/2020. In so far as Accused No.3 Wasim Akram Mohd. Kasim Shaikh is concerned, his name was disclosed during the course of interrogation of the Applicant and the co-accused as a supplier. Wasim Akram has been released on bail by this Court on 18 August 2021 in Criminal Bail Application No.1349/2021.

5. The learned counsel for the Applicant submitted that the quantity recovered is not a commercial quantity. It is submitted that it is the intermediate quantity recovered from the Applicant to which the rigours of section 37 of the NDPS Act may not apply. Secondly, it is submitted that there is non compliance of Section 50 of the NDPS Act as the Raiding Officer had informed

the Applicant that he himself is the Gazetted Officer, thereby diluting the right conferred by Section 50 of NDPS Act to be searched in the presence of a Gazetted Officer or a Magistrate and thirdly, the learned counsel has sought parity with co-accused Ajay Garud.

6. The learned APP has submitted that there is substantial compliance with the provisions of Section 50 of the NDPS Act and the matter can be gone into at the trial and not at this stage.

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

8. *Prima facie*, the claim of parity may not be acceptable as the contraband was recovered from the Applicant and not from the co-accused Ajay Garud and therefore conscious possession may not be attributable to the Accused No.2. It is however true that the quantity recovered is not a commercial quantity and therefore strictly speaking the rigours of section 37 of NDPS Act may not apply. Coming to the ground of compliance of Section 50 of the NDPS Act, the matter is no longer *res integra*. The Supreme Court has dealt with these provisions and the effect of its breach, in order dated 18 September 2015 in *Gurnam Singh @ Gagan Vs. State of Punjab*¹. The Supreme Court placing reliance on its earlier decision in *State of Rajasthan Vs. Parmanand & Anr.*² and

¹ *Special Leave to Appeal (Cri.) No.4590/2015*

² (2014) 5 SCC 345

in particular, the conclusions drawn in paragraph 19 thereof, has found that the Accused therein was entitled to be released on bail. There are also orders passed by the coordinate Bench of this Court, placing reliance on the decision in *Parmanand* in which in the face of similar situation about breach of Section 50 of the NDPS Act, the bail has been granted. It is not necessary to multiply authorities on the point. However, a reference may be made to the orders passed by the coordinate Bench in *Afaque 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.

9. The FIR dated 4 July 2020 and the panchanama show that the raiding officer had indicated to the Applicant that he is a Gazetted Officer and whether the Applicant wants any other Gazetted Officer to be called for the purposes of the personal search. In similar circumstances, as noticed earlier, this Court has granted bail to the accused.

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

³ BA No.1145/2015 dated 22/12/2015

⁴ BA No.1645/2017 dated 13/2/2018

⁵ BA No.173/2018 dated 4/7/2018

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Wasim Wajir Shaikh, be released on bail in Crime No.323/2020 of Police Station Bhadrakali, Nashik, on executing 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.)