

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.1335 OF 2021

Ravi Mangya Dharawat
Vs.

The State of Maharashtra Through P.S.O. Bamni, Gadchiroli

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. N. Ali, Advocate for applicant.
Mr. A. R. Chutke, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/02/2022

Heard Mr. Ali, learned counsel for the applicant and Mr. Chutke, learned APP for non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Sections 8(c), 20(B), 20(C), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred as “the NDPC Act”). The date of the incident is 15.10.2020 and he arrested is on the same day. The charge-sheet has been filed on 11.01.2021.

3. Mr. Ali, learned counsel for the applicant contends that before the arrest, since it is claimed that the contraband Ganja was recovered from the person of the accused/applicant, it was mandatory, for the prosecution to demonstrate the compliance with the requirements of Section 50 of the NDPS Act. Based upon, the narration and events, as availing on record, it

is contended that there is absolutely no compliance of the requirements of Section 50 of the NDPS Act. He therefore submits, that the applicant on that count is entitled to bail. Reliance is placed upon the judgment of the Single Bench of this Court in ***Sholadoye Samuel Joy Vs. The State of Maharashtra, Criminal Bail Application No.2295 of 2021, decided on 20.01.2022, State of Rajasthan Vs. Parmanand, 2014 (5) SCC, 345 (paras 12, 13 and 14), Venugopal Jaj Reddy and others Vs. State of Maharashtra, 2006 ALL MR (Cri) 387 (para 10), Mrs. Parchal @ Zilliza Isuchukwa Vs. The State of Maharashtra, 2000 ALL MR (Cri) 1761 (para 14), Narcotics Central Bureau Vs. Sukh Dev Raj Sodhi, 2011 ALL MR (Cri) 2356 (S.C.) (para 5), Ashok Kumar Sharma Vs. State of Rajasthan, 2013 ALL SCR 859 (paras 8 and 10) and Mr. Yusuji Hinagata Vs. State of Goa and another, 2019 ALL MR (Cri) 4595 (paras 13 to 19)*** in support of his contentions. Reliance is also placed upon the statements of Bandu Balaji Kusnake (page 94), Narendra Devnath Malode (page 96), Pushpa Pedamondi Gedam (page 98), Pooja Dilip Lanjewar (page 100), Durjan Rama Madavi, Police Constable B.No.2876 (page 102) and Durwas Mahadevrao Bambole, Police Constable B.No.3463 (page 104) in support of the aforesaid contentions. Reliance is also placed upon ***Sk. Raju @ Abdul Haque @ Jagga Vs. State of West Bengal, 2018 (9) SCC 708.***

4. Mr. Chutke, learned APP for non-applicant/ State vehemently opposes the application and contends that in all 33 kg of Ganja was seized on 15.10.2020, when the search of the applicant along with other persons was taken. It is his contention that this is chance search and therefore, the provisions of Section 43 of the NDPS Act would be applicable. He further invites my attention to the spot and seizure panchnamas (page 39 and 40) to contend that search, was conducted in presence of a Gazetted Officer Dr. Sachin Madavi and therefore, the requirements of Section 50 of the NDPS Act stood substantially complied with. Reliance is also placed upon ***State of Haryana Vs. Ranbir alias Rana, AIR 2006 SC 1796*** to contend that in a similar circumstance, relying upon the Constitutional Bench decision of the Hon'ble Apex Court in ***State of Punjab Vs. Baldev Singh, 1999 (6) SCC 172*** which held that Section 50 of the NDPS Act would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a bag article or container etc. which the accused at the relevant time was carrying, the mandatory provisions of Section 50 of NDPS Act would not be applicable. Further reliance is placed upon ***Kallu Khan Vs. State of Rajasthan, Criminal Appeal No.1605 of 2021, decided on 11.12.2021*** which holds, that in a case of chance recovery, Section 43 of the NPDS Act would apply and Section 50 would not be attracted when there is no recovery of contraband from the person of the accused.

5. To appreciate the factual position, it is necessary to understand what has happened on the fateful day. The statement of Durjan Rama Madavi, the Police Constable present on the spot, is material. According to him, on 15.10.2020 at around 8.00 a.m. he and other officers named in his statement, including Durvas Mahadevrao Bambole and others, had gone for Naka-Bandi at Bamni Bus Stop on Allapalli to Sironcha road and after some time at about 9.30 a.m. a taxi was seen coming from the side of Sironcha, which was stopped and checked. The activities of the four persons were found suspicious, whereupon a search was conducted and on being asked their names, one of them told that his name was Ravi Mangya Dharawat, aged 35 years, R/o Somla Tanda, District Mulgum, Telangana State on whose search, five packets of Ganja were found. The second person told his name as Bali Ravi Dharawat with whom 3 packets of Ganja were found the third was Tulshi Bichya Banot with whom four packets of Ganja were found and the fourth person was Buchamma Kasana Islawat with whom three packets of Ganja were found. He states that thereafter, the In-charge Officer Salim Sheikh called for the Gazetted Officer Dr. Sachin Madavi of Tekada Hospital, Vijay Mallalwar resident of Bamni with a weight machine, and two government panchs Balaji Padade and Mallesh Talandi from the Forest Office, Bamni. On the aforesaid persons reaching the spot the In-charge Officer Mr. Sheikh in presence of those persons conducted videography of the contraband material found from the aforesaid persons, took their weight, seized the contraband after seizure panchnama

along with the jeep and all of them came back to Bamni Police Station and upon the complaint of Chhagan Gurnule Police Constable B.No.1702 registered the offence. The statement of Durvas Mahadevrao Bambole Police Constable, Pooja Dilip Lanjewar Police Constable B. No.4327, Pushpa Pedamondi Gedam Police Constable B.No.5241, Narendra Devnath Malode, Police Constable B.No.4098, Bandu Balaji Kusnake, Police Constable B.No.2735 are identical, to what has been stated by Durjan Rama Madavi.

6. Section 50(1) of the NDPS Act, requires that when any officer duly authorised under Section 42 of the NDPS Act is about to search any person under the provisions of Sections 41, 42, or 43, he shall, if such person so requires, take such person without unnecessary delay to a nearest Gazetted Officer or any of the departments mentioned in Section 42 or to the nearest Magistrate, before whom the search would then take place. The provisions of Section 50 of the NDPS Act, have been held by the Constitutional Bench in ***State of Punjab Vs. Baldev Singh, 1999 (6) SCC 172***, to be mandatory, as severe punishment has been provided under the Act for mere possession of illicit drugs and narcotic substances and therefore, it was held that it is necessary that the safeguards provided in Section 50 of the NDPS Act are observed scrupulously. The Constitutional Bench in ***Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2011 (1) SCC 609***, while reiterating the aforesaid position has held, that failure to comply with the mandatory provisions of

Section 50, would (1) cause prejudice to suspect / accused, (2) render recovery of illicit article from accused suspect, and (3) vitiate conviction if the same is recorded only on the basis of recovery of such illicit article. In so far as the concept of 'substantial compliance', it has been specifically held in para 31 that the concept of 'substantial compliance' was neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in **Baldev Singh** (supra). In **Parmanand** (supra) going a step further, the Hon'ble Apex Court has held, that a joint communication of the right available under Section 50(1) of the NDPS Act to the accused, would not be permissible as that would frustrate the very purport of Section 50 as communication of the said right to the person who is about to be searched is not an empty formality. In para 12, it has been also held that if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act would have no application, but if the bag carried by him is searched and his person is also Searched, Section 50 of the NDPS Act will have application.

7. Considering the above position of law, and applying the same to the factual position, as availing on record, in my considered opinion, the record does not disclose, a compliance with the requirements of Section 50 (1) of the NDPS Act having being done. None of the witnesses namely, Durjan Rama Madavi, Police Constable B.No.2876 (page 102), Durvas Mahadevrao Bambole, Police Constable (page 104), Pooja Dilip

Lanjewar, Police Constable B.No.4327 (page 100), Pushpa Pendamondi Gedam, Police Constable B.No.5241 (page 98), Narendra Devnath Malode, Police Constable B.No.4098 (page 96) and Bandu Balaji Kusnake, Police Constable B.No.2735 (page 94), all of whom are employed with the police department, even uttered a single word regarding the compliance of Section 50(1) of the NDPS Act. Rather on the contrary, all of them singly speak of the search of the person of the applicant having being made, on the spot before even Dr Sachin Madavi, Gazetted Officer from Tekada Hospital was summoned. Even after he was so summoned and videography of the contraband was made and it was weighted and seized, the statements do not indicate that any compliance of Section 50(1) of the NDPS Act was ever done.

8. ***Ranbir alias Rana*** (supra) relied upon by Mr. Chutke, learned APP, for the non-applicant/State was a case in which, the plastic bag carried by the accused was searched, wherein the contraband was found and therefore it was held that there was no requirement of compliance of Section 50(1) of the NDPS Act. In ***Kallu Khan*** (supra) also, as recorded in para 15, thereof the search was of the motorcycle at the public place, from which the seizure of the contraband was made, there was no search of person of the accused, in view of which, it was held that Section 50 of the NDPS Act was not attracted. That being the case, in my considered opinion, the basic requirements of Section 50 of the NDPS Act not having been complied with in the instant case, in view of which, I am satisfied that rigors

of Section 37(1)(b)(ii), would not be an obstacle in the release of the applicant and so also as the charge-sheet has already been filed and no investigation remains to be done, a case for bail is made out. Hence, the following order.

ORDER

(i) The applicant Ravi Mangya Dharawat, be released on bail in Crime No.3005 of 2020 for the offence punishable under Sections 8(c), 20(B), 20(C), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his furnishing P.R. bond in the sum of Rs.2,00,000 (Rupees Two Lakhs) with two local solvent sureties, of Rs.2,00,000/- (Rupees Two Lakhs) each, to the satisfaction of the Trial Court.

(ii) The applicant, shall attend each and every date before the learned Sessions Court and even a single default, shall result in cancellation of the bail.

(iii) The applicant shall not tamper with the prosecution evidence or try to influence the prosecution witnesses in any manner.

(iv) The applicant shall not indulge in any similar activity and even if a single offence is registered against the applicant, the same shall result in cancellation of the bail.

(9)

13.ba.1335.2021(2)

(v) It is made clear that the above observations are *prima facie* in nature and shall not affect the trial of the matter in any manner.

JUDGE

Sarkate