

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 BAIL APPLICATION NO.632 OF 2023

GANESH PRAVIN SONAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Deshpande C. C.
APP for Respondent-State : Mr. S. B. Narwade.

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CORAM : S. G. MEHARE, J.
DATE : 07.06.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant is seeking bail in Crime No.196 of 2022, registered at Azadnagar Police Station, District Dhule, for the offences punishable under Sections 328 and 276 of the IPC and Sections 20, 22, 29 of the N.D.P.S. Act.
3. It is not in dispute that the applicant was caught red handed with the Narcotic Drugs as mentioned in the charge sheet.
4. Learned counsel for the applicant would submit that Section 50 of the NDPS Act has not been complied with. He would rely on the case of *Sholadoye Samuel Joy Vs. The State*

of Maharashtra 2022 ALL MR(Cri) 1420 and also the case of *Vijaysinh Chandubha Jadeja (2011) 1 SCC 609*. He would submit that barely serving of notice under Section 50 of the NDPS Act is not sufficient. It must be shown that the applicant did not prefer to get search before the Gazetted Officer or Magistrate. He admits the acknowledgment of notice under Section 50 which appears legally correct. He would argue that to fill up the lacuna, the denial by the applicant to get searched before the Gazetted Officers has been filled up in recovery panchnama. However, the compliance under Section 50 of the NDPS Act has not been done.

5. Per contra, the learned APP would submit that the notice under Section 50 was correctly served. Therefore, it cannot be said that there is no compliance of Section 50 of the NDPS Act. He would submit that after the acknowledgment of the notice under Section 50, immediately the recovery panchanama was drawn and it is mentioned therein that the applicant read the said notice and told the Police Inspector to seize the drugs from him. Reading the above sentence from the seizure panchanama, he has tried to argue that the applicant denied to get searched before the Gazetted Officer or the Magistrate.

6. It is not in dispute that the Gazetted Officer was there when the raid was conducted. The sole question that calls for consideration is whether the acknowledgment of notice under Section 50 is a legal compliance. The case of *Vijaysinh Chandubha Jadeja (supra)* is the landmark judgment on compliance of Section 50 of the NDPS Act. It has been observed in the said case that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act, but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. Reading these observations, soon after service of the notice the applicant's reaction would be either denial or willingness to get searched before the Gazetted Officer or Magistrate. The Investigating officer had an opportunity to have endorsement either the accused was willing to get searched or not as per Section 50 of the NDPS Act. In the absence of any such endorsement on a notice, it would be difficult to accept the contents of the prosecution that the applicant denied to get searched before the Gazetted Officer. The offences under the NDPS Act are technical and strict compliance of Section 50 and other related provisions of law are mandatory. A slightest doubt gives a benefit to the

accused. In view of that matter, the Court is of the view that it is not clear whether the applicant choose or not to exercise the right provided to him under Section 50 of the NDPS Act. In the above circumstances, the Court is of the view that the applicant deserves bail. However, it has been contended that the applicant is repeatedly involved in the crimes. Therefore, certain conditions may be imposed. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **GANESH PRAVIN SONAR** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.196 of 2022, registered at Azadnagar Police Station, District Dhule, for the offences punishable under Sections 328 and 276 of the IPC and Sections 20, 22, 29 of the N.D.P.S. Act, on the following conditions :
 - (a) The applicant shall not tamper with the prosecution witnesses.

- (b) He shall attend the Azadnagar Police Station on every first and last day of each month between 10.00 a.m. to 11.00 p.m. till conclusion of the trial.
- (c) He shall report Police Station Azadnagar if he leaves place of his residence.

(S. G. MEHARE, J.)

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vmk/-