

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1843 OF 2022

KISAN VIJAY MARIMUTTU
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Chaitanya C. Deshpande
APP for Respondent : Mr. S. P. Deshmukh

CORAM : S. G. MEHARE, J.

DATE : 03-01-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. Learned counsel for the applicant would rely on the case of ***Sholadoye Samuel Joy Versus The State of Maharashtra, 2022 All MR(Cri) 1420*** and would argue that provisions of Sections 42 and 50(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") have not been complied with. Referring to the notice allegedly served under Section 50 of the NDPS Act he would submit that the similar notice was given in the case of ***Sholadoye Samuel Joy (supra)***. However, this Court disbelieved it and observed that the applicant was not apprised of his legal right under Section 50 of the NDPS Act to be searched "only" before a Gazetted Officer or a Magistrate as mandated by the Honourable Apex Court in the case of ***Vijaysinh Chandubha Jadeja (2011) 1 SCC 609***.

3. He would also refer to Section 42 of the NDPS Act and argue that its compliance is also mandatory. In addition to this, he would argue that the quantity of Ganja allegedly seized by the Police is below the commercial quantity; therefore, Section 37 of the NDPS Act would not attract. There are crimes against the applicant, but those were not under the NDPS Act. The applicant is behind bar since January 2022. The investigation has been completed. The applicant is ready to abide by the conditions, if any, imposed, while enlarging him on bail.

4. The learned A.P.P. would argue that Section 42 and 50 of the NDPS Act have been strictly complied with, as per requirement under the law. The applicant was caught-hold red handed with Ganja. The offence is serious. He is a resident of Ulhasnagar, district Thane. Therefore, he may not be available for the trial. For this reason, the application may be rejected.

5. The Honourable Apex Court, in the case of ***Karnail Singh v. State of Haryana, (2009) 8 SCC 539***, laid down the requirements of Sections 42(1) and 42(2) of the NDPS Act. The law has been laid down that as soon as the Officer receives the information, he has to record it in writing in the register concerned and forthwith send the copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1) of NDPS Act. This was the mandatory compliance to be done by the officer receiving information; however, exception is

where it was not possible for the police officer to furnish such information then the delay in compliance with the said provision may be acceptable. The prosecution has no material as such. The first information report reveals that the intimation was given to the officer superior on wireless. The intimation was received to the raiding officer when he was in police station. So, it was possible for him to record the information in writing in the register concerned and forthwith send its copy to immediate official superior; instead of doing so, he took the permission to proceed with on the information received on wireless. Ratio laid down in the case of ***Sholadoye Samuel Joy*** (*supra*) as regards compliance of Section 50(1) of the NDPS Act is squarely applicable to the case in hand. That apart, the quantity recovered from the applicant is not strictly proved commercial. In view of the facts of the case as well as the relevant provision of law, the Court is of the view that the application deserves to be allowed. Hence, the following order:-

- i) Application is allowed.
- ii) Applicant Kisan s/o. Vijay Marimuttu be released on bail, on furnishing PB and SB of Rs.50,000/- with one solvent surety of like amount, in Crime No.28 of 2022, registered with Shirpur Police Station, District Aurangabad, for the offence punishable under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the condition to attend the trial on each and every effective date of hearing till the conclusion of the trial.

(**S. G. MEHARE, J.**)