

(ii) Ashwinikumar Sarvansingh Chouhan Vs. State of Maharashtra²

Whereas, according to learned APP, merely because there is addition of the word “judicial” in “appraisal”, it does not make any difference and he has placed reliance on the judgment of ***S. K. Raju @ Abdul Haque @ Jagga Vs. State of West Bengal³***.

4. Learned Advocate for the Applicant invited my attention to the following documents :

- (a) Averment in the complaint on page 29 which mentions the reference of the word “Judicial Magistrate”.
- (b) In the pre-trap panchnama on page 79, same reference is there.
- (c) On page 69, which is part of the police statement of PSI Rani Kale, similar reference is there.

5. As against this, on page 48, there is reference to take search through the Gazetted Officer or the Magistrate, i.e. notice given to the Applicant. It is true that in case of *Zakir Sharifulla Sayed* (supra) while giving notice under section 50 of the NDPS Act, there

² 2001 Mh.L.J. 457

³ Cri.Appeal No.459/2017 dt.05/09/2018 SC

is reference of the word “Judge” or “Gazetted Officer” and there was no reference to the word “Magistrate”, benefit was granted. Whereas in *Ashwinikumar Chouhan*, (supra) there is reference of the word “Nyay Dandadhikari”, while giving “appraisal” under section 50 of the NDPS Act, para 10, similar benefit was given.

6. After getting information from the secret informant, the present Applicant was found on bus stop, near Delhi World Public School within limits of Nerul police station on 8th February 2019. It was 19.21 hours, when the raiding party members noticed one person and after completing the formalities they searched him. He was found with “Charas” in the form of 120 pencils. They have taken sample of one pencil weighing 11 grams. It is marked as Exhibit A-1, whereas remaining is marked as Exhibit-A. There is positive Chemical Analyser’s report. Whereas in the letter written to the Chemical Analyser on page 57, there is reference of sending Exhibit-A-1. At the same time when the seized contraband was produced before the Magistrate, he has mentioned description of the muddemal as Exhibit-A-1 weighing about 1526 kgs. He has given Exhibit-A-2 to the samples drawn by him. The contention is if Exhibit-A-1 is sent to the Chemical Analyser, how can they produce

Exhibit-A-1 before the learned Magistrate.

7. In this case, though seized muddemal was produced before the learned Magistrate and though sample was taken, it was not sent for chemical analysis. So the report of the Chemical Analyser is on the basis of the samples taken on the spot.

8. I am not impressed by the objection about description of the sample produced by police before the learned Magistrate. That can be said to be mistake due to oversight. However, the fact remains that there is no evidence about the Chemical Analyser on the basis of sample taken before the Court of the Judicial Magistrate, First Class, Vashi. Ultimately, during trial the evidence of Chemical Analyser on the basis of sample taken at the spot cannot be accepted, in view of that bar under section 37 is lifted and the Applicant has made out case for grant of bail. I do not deem it proper to give observation so far as reference of the word “Judicial Magistrate” is concerned.

9. The observations in case of *S. K. Raju @ Abdul Haque @ Jagga* (supra) are on different set of facts.

10. The Applicant is entitled for bail and hence, the following order is passed :

O R D E R

- (a) The Applicant-Arjun Ramadhar Patel be released on bail in connection with C.R. No.II-73 of 2019, registered with Nerul police station for the offences punishable under Sections 8(c) read with 20 of the NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.
 - (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
 - (c) The Applicant shall give attendance to the concerned police station on every first Saturday of every month from 10 am to 12 noon for one year.
 - (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail, after notice to the Applicant.
11. Application is disposed of accordingly.
12. These are my prima facie observations and the trial Court may not be influenced by that.
13. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]