

Darshan Patil

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

BAIL APPLICATION NO.1163 OF 2022

MANISH KUMAR BORICHA ..APPLICANT

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Advait Tamhankar a/w Ashwini Achari i/b Mr. Taraq Sayed
for applicant.

Ms. P.N. Dabholkar, APP for State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 2, 2023.

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for State.
- 2.** This is an application for bail by the applicant- Manish Kumar Boricha, in connection with C.R. No. II-142 of 2020 registered with Mumbra Police Station, under sections 8(C), 22(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act', for short).
- 3.** The date of the offence is 02/02/2020. The applicant was arrested on the very same date. Upon search being conducted, a quantity of 253 gms of M.D. narcotic drug was

found on his person which is admittedly is a commercial quantity. The contention of the learned counsel for the applicant is that as of today he has completed 3 years in prison. The trial is yet to commence. So far as the merits are concerned, learned counsel for the applicant invited my attention to the panchanama. The panchanama records that the search operation under section 42 of the NDPS Act was carried out by the panchas as well as police personnel. Learned counsel for applicant relied upon the notification dated 14/11/1985 of the Home Department, Government of Maharashtra. He further relied upon a notification dated 14/11/1985 of the Central Government to demonstrate as to who are the police officers who can carry out search under section 42 of the NDPS Act. Reliance is also placed on the decision of this Court in the case of **Dilkush G. Sinal Vs. State of Goa**¹ to contend that the search has to be carried out by the persons authorised under the law. He submits that panchas are not authorised to carry out the search.

4. Learned APP vehemently opposed the application. In her submission she mentioned that the search has been carried out by the police officers who are authorised by law

1 (1995) 97 Bom LR 398

under section 42 of the NDPS Act. According to her, merely because the panchanama records that the panchas carried out the search as well alongwith the police officers does not make the search unauthorised. She submits that as the search was carried out by the police personnel as well, in the facts it has to be appreciated that the panchas were merely present and it is in their presence the search was carried out.

5. The applicant is in custody almost for 3 years with no possibility of trial commencing any time soon. Furthermore, even from the panchanama *prima facie* it is seen that the search was carried out by the panchas and the police personnel. The panchas are not authorised to carry out the search.

6. There are no criminal antecedents reported against the applicant. The applicant is in custody almost for 3 years. I am *prima facie* satisfied with the case made out by learned counsel for the applicant. Having regard to the fact that the search was carried out by the panchas as well, in the light of the decision of this Court in **Dilkush G. Sinal** (supra), in my opinion, a case for grant of bail is made out. Hence the

following order.

ORDER

(a) The Applicant- Manish Kumar Boricha shall be released on bail in connection with C.R. No. II-142 of 2020 registered with Mumbra Police Station, on furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(c) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(d) The applicant shall report to the concerned police station once in a week i.e. on every Monday between 11.00 a.m. and 01.00 p.m. till conclusion of the trial.

7. The application is disposed of.

(M. S. KARNIK, J.)