

Rajan Subramaniam	...	Applicant
V/s.		
Union of India and Anr.	...	Respondents

Mr. Shreeram Shirsat a/w. Ms Tanvi Mate, for respondent no. 1.

DATE : 30th October 2023.

2. Learned advocate for the accused no. 1 submitted that accused no. 2 has been released on bail by the trial Court. Learned advocate for the accused no. 1, in addition to the ground of parity submitted that in this case there was non-compliance of section 50 of the NDPS before conducting the search of the accused. In order to buttress this submission, learned advocate drew my attention to the

contents of the seizure panchnama and the complaint lodged by the officer. Learned advocate submitted that failure to comply with section 50 of NDPS, vitiates the entire proceeding. Learned advocate submitted that at the trial the prosecution may lead the evidence and establish the compliance of section 50, but at this stage, *prima facie* perusal of the panchnama and the complaint would indicate that there was no strict compliance of section 50. Learned advocate submitted that thus the accused is entitled for bail. It is submitted that accused is ready to abide by the conditions that may be imposed by this Court.

3. Learned special PP submitted that while writing the chronology of the events in the panchnama and in the complaint the sequence has been missed. It is submitted that change in the sequence while writing the panchnama and the complaint may not be the ground to contend that the compliance of section 50 of NDPS Act was made after search. It is pointed out that there is specific mention in the panchnama as well in the complaint that before taking search, the accused no. 1 was apprised of his rights under section 50 of NDPS and on being apprised, the accused declined to exercise the said right. Learned APP submitted that therefore, this ground is not available to him. Learned special PP submitted that in this case quantity of substance is commercial quantity and, therefore the rigors of section 37 of NDPS would get attracted.

4. In order to appreciate the rival submissions, I have minutely perused the panchnama and the complaint. It is seen that the chronology of the events has not been properly recorded in the

panchnama. The contents of panchnama and the contents of complaint with regard to the compliance of section 50 of NDPS Act has to be considered, *prima facie* to appreciate the submission. It is apparent that chronology of the events recorded in the panchnama and the complaint indicates that first search was conducted and then compliance was made. As per the prosecution case he was apprised of his right and the manner in which, he was apprised of his right has been stated in the panchnama. Perusal of the same, at this stage, *prima facie* indicates that there is substance in the submission of learned advocate for the accused. These observations obviously would be confined and relevant for the purpose of deciding the bail application. The respondent can, at the trial, lead the evidence and strictly prove the compliance of section 50 of NDPS, Act or explain in detail the chronology of the events related to the compliance of section 50 of NDPS, Act.

5. In my view, at this stage, on the basis of available record, the accused has made out a case for bail. In the teeth of above observations the rigors of section 37 cannot come in the way, on the ground that quantity is a commercial quantity. In my view no further observation on this aspect is necessary, otherwise it can prejudice the respondent. In view of the above, the accused is entitled for bail. Accordingly, the application is allowed on the following terms and conditions:-

ORDER

- (i) The criminal application is allowed.

(ii) Applicant/accused- Rajan Subramaniam be released on bail in connection with F. No. NCB/MZU/C.R.- 17/2021 registered by the respondent for the offences punishable under sections 8(c) read with sections 22(c) and 29 of the NDPS Act, 1985 on his furnishing P.R. Bond in the sum of Rs.15,000/-(Rupees fifteen thousand only) with solvent surety in the like amount.

(iii) The applicant shall not indulge into the commission of similar crime.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

6. The application is disposed of in the aforestated terms.

(G.A. SANAP, J)

VARSHA
DEEPAK
GAIKWAD

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by VARSHA
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