

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

**BAIL APPLICATION NO. 2300 OF 2022**

Mohd. Aasif S/o. Mohammed Shaikh ...Applicant

vs.

The State of Maharashtra ...Respondent

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Mr.Naumen Shaikh a/w Ms.Heena Momin i/b. Mr.Abdeli Kothawala  
– Advocates for Applicant.

Mr.S.R.Agarkar – APP for Respondent-State.

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**CORAM : S. M. MODAK, J.**

**DATED : 28TH JUNE 2023**

**P. C. :**

1. Heard learned Advocate for the Applicant and learned APP
2. His main contention is that the Officer Senior Police Inspector Shailendra Nagarkar attached to Anti-Extortion Cell – Thane Unit while giving appraisal to the present Applicant about his arrest under Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”] has explained him that he is himself is Gazetted Officer. The contention is that even though he was told of his right to be searched in the presence of another Gazetted Officer or Magistrate, by stating that he is a Gazetted Officer, has misled the

Applicant and hence, according to him, even though it is a commercial quantity of the contraband charas, the rigor under Section 37 of NDPS Act will not be applicable. In order to buttress his submission, he relied upon the following judgments :-

- (i) Nafor Igwe Chima V/s. The State of Maharashtra<sup>1</sup>
- (ii) Afaque Asif Sayyed V/s. State of Maharashtra<sup>2</sup>
- (iii) Salma Suleman Shaikh V/s. State of Maharashtra<sup>3</sup>

I have read all of them. In case of *Afaque Asif Sayyed* (supra), learned Single Judge has also referred to the observations of Hon'ble Supreme Court in case of *State of Rajasthan V/s. Permanand and Anr.*<sup>4</sup> and *Gurnam Singh @ Gagan V/s. State of Punjab*<sup>5</sup>.

3. In this case, it is true that there is station diary entry on Page No.55, wherein Senior Police Inspector Shri.Nagarkar has informed on telephone that secret informant has informed him about arrival of one person and sale of narcotics by him. It is also true that there is panchnama at Page No.45 and relevant page is 49, wherein Senior Police Inspector Shri.Nagarkar has apprised the Applicant of his right to be searched in the presence of Gazetted Officer / Magistrate.

Furthermore, he has also told the Applicant that he / Mr.Nagarkar is

1 Bail Application No. 541 of 2019 : 23<sup>rd</sup> September, 2019 : Bombay High Court

2 Bail Application No. 1145 of 2015 : 22<sup>nd</sup> December, 2015 : Bombay High Court

3 2018 SCC ONLINE BOM 13261

4 (2014) 5 SCC 345

5 Special Leave to Appeal (Cri) No.4590 of 2015 : Supreme Court

Gazetted Officer. Learned APP invited my attention to the notice given under Section 50 to the Applicant dated 31<sup>st</sup> July, 2019 (Page No.38).

4. What is the defect in the averments of trap panchnama on Page No.49 is that Senior Police Inspector – Nagarkar has told the Applicant that he is a Gazetted Officer. In view of this, the observations in case of Afaque Asif Sayyed (Para No.4) are applicable to the facts of this case. The Applicant may contend that he was misled about his right to be searched in the presence of Gazetted Officer or Magistrate.

5. In view of that, bar under Section 37 of NDPS Act is lifted. Hence, case for bail is made out. Hence, order :-

#### O R D E R

- (i) Application is allowed.
- (ii) Applicant Mohd. Aasif S/o. Mohammed Shaikh be released on bail in connection with C.R. No. 627 of 2019 registered with Mumbra Police Station - Thane for the offences punishable under Sections 8(c), 20, 22 of NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.
- (iii) Applicant is directed to give attendance to Anti-Extortion Cell – Thane Unit on first Wednesday of every month from 3.00 to 5.00 p.m., for one year.

(iv) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

6. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.

7. Application is disposed of in the aforesaid terms.

8. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]