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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3491 OF 2021**

Bensen Thomas ... Applicant
Vs.
The State of Maharashtra ... Respondent

Ms. Ashwini Achari i/b Mr. Advait Tamhankar for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 8TH MARCH 2023

PC:-

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The Applicant was found with 20 grams of cocaine by raiding party members on 9th January 2021. On getting information the raiding party went near gate of MHADA building which falls within limits of Mira Road police station. In all, four accused persons were found possessing different kinds/types of narcotic substance and possessing different quantity. Accordingly, FIR was lodged on 10th January 2021, under sections 8(c), 20(a) and 22 of the NDPS Act.
3. The Application of present Applicant came to be rejected by the Court of Additional Sessions Judge. However, subsequently, two co-accused by name Mr.Moriba Tokpa and Mr.Nweke Livinus were

granted bail by the Court of Special Court under NDPS Act. The order copies are tendered on record. In addition to that it is submitted that the provisions of section 50 of NDPS Act were not followed. Copy of letter issued to the Applicant dated 9th January 2021 is shown to me. It is taken on record and marked as Annexure "B".

4. This Court in the order dated 6th August 2018, passed in Bail Application No.1496 of 2018, had an occasion to deal with grievance about non compliance of NDPS Act so also the Hon'ble Supreme Court in case of *State of Rajasthan Vs. Parmanand & Anr.*¹ has dealt with issue of right to be searched before a gazetted officer under the NDPS Act.

5. There is no dispute that the Applicant was not possessing commercial quantity of cocaine. In view of that rigors for grant of bail under NDPS Act will not be applicable.

6. According to learned APP the Applicant is citizen of Nigeria and certain strict conditions be imposed. I am inclined to grant bail to the Applicant. In view of that the following order is passed :

ORDER

- (a) The Applicant-Bensen Thomas be released on bail on furnishing personal bond and surety bond in sum of Rs.50,000/-.
- (b) The Applicant to furnish surety having permanent residence from Thane District.

¹ 2014 AIR (SC) 1384

- (c) The Applicant not to threaten the prosecution witnesses or allure them in any manner.
 - (d) After being released on bail the Applicant to furnish his residential address. He is directed to deposit his passport with the Investigating Officer till the conclusion of the trial.
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.)