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

BAIL APPLICATION NO.2304 OF 2023

IQRA ABDUL GAFFAR QURESHI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Taraq Sayed a/w Adv. Rishabh Botadra for the
applicant.

Mr. J. P. Yagnik, Special Public Prosecutor for respondent-
NCB.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 19, 2023

P.C. :

1. Heard learned counsel for the applicant and learned
Special Public Prosecutor for respondent-NCB.

2. This is an application for bail in respect of the offence
punishable under Sections 8(c), 22(c), 28 and 29 of the
Narcotic Drugs and Psychotropic Substances Act, 1985
(hereafter "NDPS Act", for short) registered vide C.R.
No.NCB/MZU/CR-32 of 2021 with Narcotics Control Bureau,
Mumbai Zonal Unit.

3. A specific information was received by the NCB on
06.04.2021 that the applicant is dealing with the

contraband Mephedrone (MD) and selling the substance from her house. A raid was conducted. No contraband was found in the house of the applicant. The personal search of the present applicant was conducted by a lady Havildar – Deiva Rani. The contraband MD weighing 52.2 grams was recovered in a transparent polythene bag from the personal search of the applicant. The contraband is 2.2 grams more than the minimum of the commercial quantity prescribed by the notification under the NDPS Act. The rigours of Section 37 of the NDPS Act are therefore applicable. The applicant was arrested on 06.04.2021.

4. It is the submission of learned counsel for the applicant that the search was not carried out by the empowered officer in terms of Section 42 of the NDPS Act. The Havildar was not empowered to carry out the personal search carried out the search. A specific contention to this effect has been raised in paragraph 8 of the application contending that such personal search carried out by an officer not empowered to carry such search violates Section 42 of the NDPS Act.

5. Special Public Prosecutor for the respondent while opposing the application for bail invited my attention to the decision of the Hon'ble Supreme Court in the case of **Ranjan Kumar Chadha Vs. State of Himachal Pradesh¹**. My attention is invited to paragraph 66 where the requirements envisaged by Section 50 of the NDPS Act are summarised by Their Lordships. According to learned Special Public Prosecutor, all the requirements of the NDPS Act in terms of the decision of the Hon'ble Supreme Court are duly complied with and therefore the application be rejected. An affidavit-in-reply has been filed by the respondent opposing the application for bail.

6. A perusal of the affidavit-in-reply would reveal that there is no denial to the specific contention raised by the learned counsel for the applicant that the search is conducted by the officer not empowered to carry out the search in terms of Section 42 of the NDPS Act. Section 42 needs to be reproduced which reads thus :-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.—

1 2023 SCC OnLine SC 1262

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for

manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector :

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

7. It is not the submission of learned Special Public Prosecutor that the 'Havildar' is an empowered officer. The submission is that since the search of the applicant who is a woman was to be carried out, the 'Havildar' accompanying the raiding party being a woman was asked to carry out the search. I am afraid that prima facie such search violates the requirements of Section 42 of the NDPS Act which provides that the personal search by an empowered officer.

8. The applicant is in custody since the date of her arrest on 07.04.2021 for a period of almost two years and eight months. Though the trial has commenced, only one witness

has been examined so far. The applicant is a woman. In my opinion for the reasons mentioned hereinbefore, I am satisfied that the rigours of Section 37 can be overcome. It is pointed out that while in jail the applicant was arrested in another offence under the NDPS Act on 16.06.2021 on the statement of the co-accused therein. In the facts of the present case, registering of the subsequent offence against the applicant should not be a factor to deprive the applicant the facility of bail. The applicant does not appear to be a flight risk. The applicant can be enlarged on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Iqra Abdul Gaffar Qureshi in connection with C.R. No. NCB/MZU/CR-32 of 2021 registered with Narcotics Control Bureau, Mumbai Zonal Unit shall be released on bail on her furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall report to the Officer of the Narcotics Control Bureau, Mumbai Zonal Unit, once every week on Monday between 11.00 a.m. to 1.00 p.m.

(d) 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.

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

(f) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant shall not leave the jurisdiction of Mumbai/Mumbai Suburban district without the permission of the trial Court.

(h) The applicant shall surrender her passport, if not already surrendered to the NCB office.

9. The application is disposed of.

10. It is made clear that the observations are prima facie in nature for consideration of this bail application and shall not influence the trial Court.

(M. S. KARNIK, J.)