

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

BAIL APPLICATION NO. 4125 OF 2021

Santosh Pandurang Parte

...Applicant

vs.

Amar Bahadur Maurya And Anr.

...Respondents

Mr. Mithilesh Mishra i/by Raju Mate- Advocate for the Applicant

Mr. Jitendra B. Mishra a/w Dhananjay B. Deshmukh - Advocate for
the Respondents

Mr. H. J. Dedhia – APP for the State

CORAM : S. M. MODAK, J.

DATE : 19th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned
Advocate for the Respondents.

2. Raid was conducted in the farmhouse of the present
Applicant at Kelghar, Taluka Jawali, District Satara, on 17/03/2021
by the department of the Customs Dapoli Division, Ratnagiri. Two
rooms were searched and in one plastic bag containing plastic
pouches were found which consists of Ganja. His personal search
was also taken but nothing objectionable was found. Samples were
drawn at the spot marked at Exh. Nos. A1 to L1. Second samples

were also taken from those gani bags. The Applicant came to be arrested. Complaint was filed before the learned Special Judge, NDPS Satara.

3. Learned Advocate for the Applicant made following submissions:-

- a) There is non-compliance of the provisions of the Section 50 of the Narcotic Drugs and Psychotropic Substances Act.
- b) Page no. 28 is the notice. It does not mention about the right of the accused to be searched. It only mentions about necessity.
- c) The contention is raised even if nothing is found on the body still the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act needs to be complied with in letter and spirit.
- d) He relied upon following judgments:-
 - (i) *State of Rajasthan Vs. Parmanand and Another*¹
 - (ii) *Gurnam Singh @ Gagan Vs. State of Punjab, decided on 18/09/2015 by the Supreme Court of India.*
- e) Though samples were also drawn before learned Magistrate as contemplated under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, what was said to the Chemical Analyzer was that

1 (2014) 5 SCC 345

samples taken at the spot and not before learned Magistrate.

- f) While taking samples Customs department have given the description on page no. 12. It consists of dried green leaves and dried green flowering tops. Whereas in the Chemical Analyzer report at page no. 146 while describing the samples, it mentions about fruiting and flowering tops, leaves, shoots etc.. This is in violation of the definition of the Ganja given in Section 2 of the Narcotic Drugs and Psychotropic Substances Act.
- g) To buttress this point, he relied upon the Order passed by this Court in case of *Ibrahim Khwaja Miya Sayyed @ Raju Vs. State of Maharashtra* in Bail Application No. 1296 of 2022, decided on 17/03/2023.
- h) The search is vitiated because no independent Gazetted officer was present. Shri J. M. Bhoite, Superintendent of Customs was present and he posed himself as Gazetted officer. He belongs to the department and cannot be said to be an independent officer.
- i) Even if nothing is found with the present Applicant, Section 50 is mandatory. This was view taken in case of *Sanjeev and Anr. Vs. State of Himachal Pradesh*².

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j) Even though search was taken in the farm house, entire procedure of seizure and taking samples was undertaken in the office of the Customs at Dapoli. This is clear violation. It is observed by learned Single Judge in case of **Mr. Ravi Raju Mane and Anr. Vs. The State of Maharashtra**, in Bail Application No. 2020 of 2017, decided on 10/11/2017.

4. As against this, learned Advocate for the Respondents contended that the issue about non-compliance of the Section 50 can be looked into during the trial and for that purpose observations in case of **State of Punjab Vs. Baldev Singh**³ is relied upon and more specifically para no. 57(5).

5. It is also contended that observations in case of **Union of India Vs. Mohanlal and Another**,⁴ are duly complied with.

6. After going through submission and going through the papers, I am impressed by only one argument that is about not sending samples taken before Learned Magistrate to the Chemical Analyzer. The argument about “not taking samples at the spot but in the office, non- compliance of the provisions of Section 50 (so as to

3 1999 (6) SCC 172

4 (2016) 3 SCC 379

say not having appropriate words in the notice and Mr. Bhoite, Superintendent of Customs acted as Gazetted officer)” does not appeal to my conscience. Page no. 13 – is the details about the search and seizure.

7. Whereas as per letter dated 13/05/2021, the samples were sent to the Central Forensic Science Library are A1 to L1. They are taken at the spot/office. Whereas Chemical Analyzer report is on page no. 146. It talks about samples which were taken at the spot/office i.e. A1 to L1.

8. No doubt, it is true that the Court of the JMFC was moved by making an application on 07/05/2021 at page no. 118. It also shows that learned Magistrate has taken the inventory and drawn few of the samples as mentioned in the para no. 14 of certificate on page no. 128 but fact remains that these samples were not sent to the Chemical Analyzer.

9. So it is true that the directions in para no. 31(1) of the observations in case of *Union of Indian Vs. Mohanlal (Supra)* were not followed. Ultimately when the evidence will be adduced during the trial, there will not be Chemical Analyzer report available on the basis of the analysis done about samples taken before learned

Magistrate what will be available is Chemical Analyzer report about samples taken at the spot/office. In case of *Simarnjit Singh s. State of Punjab*, decided by the Hon'ble Supreme Court in Criminal Appeal No. 1443 of 2023 on 09/05/2023, the Hon'ble Supreme Court has refused to accept analysis done on the basis of the samples taken at the spot and set aside the conviction.

10. Learned Advocate for the Respondents submitted that in this case, this issue can be decided at the time of the trial.

11. Be that it may ultimately the trial will be conducted only on the basis of the evidence collected during investigation. So, this contention can not be accepted.

12. So for above discussion, I think that Applicant has made out the case for bail. The contraband seized is commercial quantity. Bar under Section 37 is lifted. Hence, the Applicant is deserves to release on bail. Hence Order:-

ORDER

- (i) Bail application is allowed.
- (ii) Applicant-Santosh Pandurang Parte arrested in connection with C.R. No. 156 of 2021 registered with Customs Dapoli Division for the offence punishable

under Sections 20(b)(ii)(c) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 50,000/-.

(iii) He is directed to give attendance to the Office of the Customs at Dapoli on 01/08/2023, 08/08/2023 and 15/08/2023.

13. It is made clear that the observations made herein are prima facie.

14. Application is disposed of in the aforesaid terms.

[S. M. MODAK, J.]