

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4341 OF 2021**

Ogodo Immanuel Uchechukwu	...Applicant
vs.	
State of Maharashtra	...Respondent

Ms. Ashwini Achari i/b Advait Tamhankar i/b Tariq Sayed for the Applicant.

Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 21ST JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.

2. In this Application, only two points are raised. They are as follows :-

(a) The acknowledgment given by the clerk of Forensic Laboratory, Mumbai mentions that only one sealed parcel is received. (page 59). Under the head “Description of Articles” in the same letter, the muddemal is described as A-1 and B-1. The contention is that if there are two sealed packets, how the clerk can give acknowledgment for one sealed parcel.

(b) **In the search panchnama**, dated 11th January 2021, there is reference of giving of letter in English about appraisal of provisions under section 50 of the NDPS Act (page 46) and consent given by the Applicant for taking personal search and not taking objection and giving acknowledgment on the appraisal letter. As against this the letter dated 11th January 2021, (page 55) does not contain any endorsement in the form of acknowledgment, no objection, consent.

3. As against this, learned APP submitted that the Chemical Analyser's report is received and it mentions about two sealed packets. It is taken on record and marked as Annexure "X" and copy is supplied to other side. According to him both these contentions cannot be decided at the time of hearing of this Application and these contentions can be raised at the time of trial.

4. After hearing them, I feel that these contentions does not deal with such subjects so that benefit can be given at bail stage. It cannot be said that there is blatant violation of the provisions of the said Act. So I do not think that the bar under section 37 of the NDPS Act can be lifted. It is for the reason that even though the acknowledgment on page 59 mentions about one sealed parcel,

when I have seen the correspondence, I find that there is clear description of two sealed packets described as A-1 and B-1, which finds place in letter written by ASI on 31/01/2021 page 58. This is the request to handover muddemal for sending it to Chemical Analyser. At the same time Chemical Analyser while carrying out the analysis mentions about receipt of two sealed packets. On this background when the description in panchnama at page 47 is perused the following facts is revealed :--

- (a) One envelope of Amphetamine consisting 19.66 mg was found, and
- (b) Two samples "A-1" and "A-2" were taken consisting of 2 gm each. The remaining contraband was marked as "A".
- (c). Out of 57 pills of MDMA, 2 pills were taken as samples described as "B- 1" and "B-2".

This description sufficiently describes, what is muddemal property.

5. There is also statement of carrier Mr. Santosh Gaikwad at page 119, who says that he has handed over two samples "A-1" and "B-1" to the office of Chemical Analyser. So there is sufficient evidence to suggest that there are two packets. At the most it can only be said

that the clerk of Forensic Laboratory committed mistake by writing one sealed parcel.

6. Even though there is no endorsement on appraisal letter, the prosecution needs to be given an opportunity to adduce evidence.

No case is made out. Application is disposed of.

7. It is submitted that the Applicant is behind bar for last two years and yet the charge is not framed. Liberty is granted to the Applicant to move again for fresh bail **before the trial court** only if the trial does not start within two years from today.

8. A copy of this order be sent to learned Judge for information.

[S. M. MODAK, J.]