



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

BAIL APPLICATION NO. 3966 OF 2023

SACHIN LAXMIKANT MISHRA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Ms. Lochan Chandka a/w Mr. Raunak Naik, for the Applicant.
Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 14, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 8(c) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'the NDPS Act' for short) registered on 16/08/2023 vide C.R. No.II-585 of 2023 with Kashimira police station.
- 3.** There are in all 3 accused. The applicant is the accused no.1. The applicant was arrested on 16/08/2023.
- 4.** This is a case of a chance recovery. The movements of the applicant were found suspicious. The applicant was searched on 16/08/2023 by the raiding party. The applicant

was found in possession of the contraband Mephedrone (MD) weighing 24.7 grams which is an intermediate quantity and not a commercial quantity. It is on the information of the applicant that the contraband was purchased from the accused no.2, that the accused no.2 came to be arrested who was found in possession of the contraband MD weighing 31 grams.

5. Learned APP submitted that though the applicant was found in possession of non-commercial quantity of contraband, as section 29 of NDPS Act is applied to the present case, the quantity found with the applicant as well as accused no.2 will have to be taken together which is more than the commercial quantity. Hence, according to her the rigours of section 37 are applicable.

6. In my opinion, the materials on record indicates that the applicant was found in possession of an intermediate quantity of contraband. It is on the information of the applicant that he had purchased the contraband from the accused no.2, that the accused no.2 came to be arrested and found in possession of 31 grams of MD. On the basis of the materials on record, prima facie, I am of the opinion that

quantity which is found in possession of the applicant will have to be regarded as such being a non-commercial quantity and hence rigours of section 37 will not be applicable.

7. Assuming section 29 of NDPS Act is attracted even then from the panchanama dated 15/08/2023, it is noticed that there is breach of section 50(1) of the NDPS Act. The panchanama dated 15/08/2023 mentions that officer of the raiding party while informing the accused his right to be searched before the gazetted officer or the Magistrate, mentioned that the officer himself is a gazetted officer and he has right to search the applicant. In terms of section 50 of the NDPS Act, the applicant has right to be searched before the gazetted officer or Magistrate, if the applicant so desires. This court in the case of Afaque Asif Sayyed Vs. State of Maharashtra in Bail Application No. 1145 of 2015 by order dated 22/12/2015 in paragraphs 3 and 4 has observed thus :

“Learned Counsel for the applicant submitted that the moment the police inspector being member of raiding party informed the applicant that he himself is a gazetted officer, and whether the applicant would like to have himself searched before another gazetted officer or a Magistrate, the provisions of section 50(1) of the NDPS Act are breached. In support of his

contentions, he relied upon the decisions of the Supreme Court in the case of State of Rajasthan Vs. Parmanand & Anr. reported in (2014) 5 SCC 345 and in the case of Special Leave to Appeal (Cri) No.4590 of 2015 (Gurnam Singh @ Gagan Vs. State of Punjab). He further submitted that the Apex Court in view of the similar facts and circumstances of the present case was pleased to grant bail to the applicant therein. Learned Counsel for the applicant thereafter placed his reliance upon a judgment of the division bench of this Court reported in 2001(5) BCR (Cri) 9 in the case of Dharmaveer Lekhram Sharma Vs. State of Maharashtra.

4. The Division Bench of this Court in para 8 of the said judgment has held that inclusion of police officers who are also gazetted officers in the raiding party is obvious. However, mentioning of the fact while appraising the accused regarding their right as contemplated under section 50 of the NDPS Act suggests, by necessary implication that accused were discouraged in obtaining search by independent authority. That the possibility of misleading the accused cannot also be ruled out in this regard. It has been further held that in view of the same the appraisal as contemplated under section 50(1) of the Act gets vitiated. In the present case, a plain reading of the FIR itself makes it clear that the senior P.I. Mr.Kshirsagar who was also a member of raiding party before appraising the applicant of his legitimate right under section 50(1) of the N.D.P.S. Act has introduced himself to the applicant as also a Gazetted officer. This in view of the ratio laid down by the aforesaid judgements, clearly vitiates the provisions of section 50(1) of the NDPS Act. In view of the above, the applicant has made out a case to be released on bail.”

8. In my opinion, the decision in Afaque Asif Sayyed will apply to the facts of the present case as well. It is made clear that these observations are prima facie in nature only

for the purpose of deciding this application and shall not influence the trial.

9. I am satisfied that the twin conditions of section 37 of the NDPS Act are satisfied. No criminal antecedents are reported against the applicant. Hence, it is unlikely that the applicant will commit any offence while on bail. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Sachin Laxmikant Mishra in connection with C.R. No. II-585 of 2023 registered with Kashimira police station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.

(c) The applicant shall attend the investigating officer of Kashimira police station once in a month on first Monday of every month between 10.00 a.m. and 12.00 noon till the conclusion of the trial.

(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 his 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 surrender his passport to the investigating officer. If the applicant does not have passport, he shall file the affidavit to that effect.

10. The application is disposed of.

(M. S. KARNIK, J.)