



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 BAIL APPLICATION NO. 398 OF 2024

Sayyed Sheru Sayyed Budan
VERSUS
The State of Maharashtra

Advocate for Applicant : Mr. Chaitanya C. Deshpande
APP for Respondents: Mr. Mukesh K. Goyanka

CORAM : SANJAY A. DESHMUKH, J.
DATED : 10th MAY, 2024.

PER COURT :-

1. This is an application for granting bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 89 of 2021 registered with Mohadinagar, police station, District Dhule for the offences punishable under Sections 8-C and 21-C, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. His application with similar prayer below Exh.63 in Special Case No. 02 of 2022 came to be rejected by the learned Additional Sessions Judge-4, Dhule, vide order dated 17.2.2024.

2. It is averred in the report that a police constable Mr. Firoz Pathan alongwith other police staff got the information and accordingly a raid was effected by P.I. Hemant Patil, alongwith the panchas, a photographer, weighing machine and other articles went to the Hotel Residency Park. One gazetted Officer Vishwanath

Choudhari, the Naib Tahsildar alongwith the raiding party, reached at the side of Hotel. The applicant was found alongwith a red colour bag with some suspicious movement. The applicant tried to run away but he was caught hold on the spot and thereafter, his search was taken. The raiding party found that there were five plastic bags containing 500 gms brown sugar worth Rs.7,50,000/- and it came to be seized at the instance of the applicant. The report was lodged.

3. Learned advocate for the applicant submitted that this court by order dated 29.8.2023 rejected bail application No. 1080 of 2023, filed by the applicant on the ground that it is a commercial quantity. However, there is change in the circumstances the compliance of Section 50 of the N.D.P.S. Act was not done on the part of the investigating officer. The C. A. report is not on record. The applicant has no criminal antecedents. Therefore, it is prayed to allow the application on technical ground of non compliance of Section 50 of N.D.P.S. Act. Learned advocate for the applicant is relying upon the authority of Hon'ble Supreme Court in the case of **Simarnjit Singh vs. State of Punjab** (Criminal Appeal No. 1443 of 2023 decided on 9.5.2023). Para 8 of the same reads as under:-

"8. In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case, it was held thus:

"15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police

station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct."

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure."

4. Learned advocate for the applicant is also relying upon the authority of this Court (Nagpur Bench) in the case of **Praveen Supda Chavan and another vs. State of Maharashtra** (Criminal application (Ba) No. 101 of 2023, decided on 23.06.2023). Para 10 of the same reads as under:-

“10. In view of Section 37 of the NDPS Act, the power to release an accused on bail subject to the limitation contained in Section 439 of the Cr.P.C. coupled with the limitation contemplated in view of Section 37 itself, mainly (1) there are reasonable ground for releasing that accused is not guilty of such offence, (2) that he is not likely to commit such offence while on bail. The expression reasonable ground means something more than prima facie ground it contemplates substantial probable cost for believing that the accused is not guilty of the offence.”

5. Learned advocate for the applicant is also relying upon the authority of this Court (Nagpur Bench) in the case of **Kuldeep vs. State of Maharashtra** (Criminal application (BA) No. 178 of 2023, decided on 27.07.2023). Para 18 of the same reads as under:-

“18. The seizure of the contraband articles and recital of the First Information Report show that at the time of raid “Mephedrone Drug Powder” was taken in one envelope for the purpose of forensic examination which shows that the samples for the forensic examination were obtained at the time of seizure itself. Sub section (3) of Section 52-A of the NDPS Act requires that the magistrate shall as soon as may be, allow the application for the inventory. This implies that as

soon as the seizure was effected and contraband was forwarded to the officer incharge of the police station or the officer empowered, the officer concerned has to approach the magistrate for the purpose of grant of permission to draw representative samples in his presence and the same samples shall be enlisted and correctness of the list of samples so drawn certified by the magistrate.”

6. Learned A.P.P. for the respondent-State has strongly opposed the application and submitted that huge quantity of prohibited drugs narcotics substance is recovered from the applicant. His earlier application for bail was rejected on merits. There is no change in the circumstances. The learned A.P.P. is relying upon the authority of the Hon'ble Supreme Court in the case of ***State by the Inspector of Police vs. B. Ramu*** criminal appeal arising of S.L.P. (Cri.) No. 8137 of 2022. Para 11 of the same reads as under:-

“11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.”

It is thus observed that the court in case of recovery of narcotic substance should be slow in granting bail. It is lastly prayed to reject the application.

7. Admittedly, the bail application filed by the applicant was

rejected by this Court by recording the reasons. As far as the compliance of Sections 20 and 50 of the N.D.P.S. Act is concerned, the samples were taken in presence of the Magistrate under the supervision of Magistrate and he has certified that. The inventory in this case is pointed out in which the Magistrate has certified the inventory at the time of obtaining the samples and seizure. Considering the fact that drawing of inventory is sufficient compliance of the N.D.P.S. Act, as averred in this application. Thus, the reasons given by this Court while rejecting the earlier bail application bearing No. 1080 of 2023 and the fact that the inventory is drawn and there is sufficient prima facie evidence of compliance of Section 50 of N.D.P.S. Act, the application deserves to be rejected. The application is accordingly rejected.

(SANJAY A. DESHMUKH, J.)

rlj/