



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.639 OF 2024

Sahil Shah Sattar Shah,
Age 21 years, Occu. Labour,
R/o. Ramdev Baba Nagar,
Near Natraj Talkies,
Taluka and District Dhule .. Applicant

Versus

The State of Maharashtra
Through Azadnagar Police Station,
District Dhule .. Respondent

**WITH
BAIL APPLICATION NO.1160 OF 2024**

Ajay s/o. Raju Kothari,
Age 33 years, Occu. Labour,
R/o. Behind Old Government Hospital,
Pardesi Pura, Taluka and
District Nandurbar .. Applicant

Versus

The State of Maharashtra
Through Dhule City Police Station,
District Dhule .. Respondent

Mr. C. C. Deshpande, Advocate for Applicants
Ms. D. S. Jape, A.P.P. for Respondent

CORAM : S. G. MEHARE, J.

**RESERVED B.A.No.639 of 2024
ON 20-07-2024 AND
B.A.NO.1160 OF 2024 ON
25.07.2024**

PRONOUNCED ON: 14-08-2024

PER COURT :-

1. Heard the learned counsel for the applicants and the learned
A.P.P. for the respondent.

2. In Bail Application No.639 of 2024, applicant - Sahil Shah Sattar Shah seeks bail in C.R.No.306 of 2023 registered with Azad Nagar Police Station, District Dhule, for the offence punishable under Sections 328 and 276 of the Indian Penal Code (for short, "the IPC") and 8(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") and Section 18 of the Drugs and Cosmetics Act.

3. In brief, it has been alleged against applicant - Sahil Shah that, based on secret information, Police raided the spot of the incident. After recording the information in the station diary, permission to lay the raid was also sought from the Superintendent of Police. The Inspector of the Food and Drugs Department was also called. They reached the Mahaveer Apartment, situated on the road that goes from Bholabazar Square towards Natraj Talkies. At some distance, they found that one person was holding a plastic bag near the bushes. The Police tried to apprehend him. He tried to flee away. One of the constables of the raiding party identified him and apprehended him. He was told the reasons for his arrest. The Police took his physical search and recovered 26 bottles found in the bag. The Police drew seizure panchnama on the spot of the incident and took samples.

4. In Bail Application No.1160 of 2024, the applicant - Ajay Raju Kothari seeks bail in C.R.No.264 of 2023 registered with Dhule City

Police Station, District Dhule, for the offences punishable under Sections 328 and 276 of the IPC and Sections 8A(a) and 22 of the NDPS Act and Section 18(c) of the Drugs and Cosmetics Act, 1940.

5. Brief allegations against the applicant - Ajay Kothari, were that the Police got secret information that the applicant came to Dhule from Nandurbar with the psychotropic substance contained in the bottles and pills for selling and was standing near Dhule Bus Stand. After the formalities for the raid the police raiding party reached on the spot. The applicant was apprehended on the spot of the incident with a psychotropic substance. He was told the reason for his arrest. The applicant told his name. The Police drew the samples from the contraband and sealed it under the signature of the Inspector of Drugs on the spot of the incident.

6. In both cases, Learned counsels for the applicants argued that Sections 50 and 52A of the NDPS Act have not been complied. The seizure of contraband is illegal. Drawing samples from contraband on the spot of the incident is inadmissible under Sections 52-A(2) and (3) of the NDPS Act. That raises doubt about the veracity of the seized contraband recovered from him. His search is illegal without compliance of Section 50 of the NDPS Act. The physical search of the accused should be taken "only" in the presence of the Gazetted Officer of any department specified under the NDPS Act or any nearest Magistrate. The officer who

claimed to be present with the raiding party, though Gazetted Officer, is not an officer as provided under Section 42 of the NDPS Act. Apart from that, the contraband has been recovered, and nothing is to be recovered from them.

7. Learned counsel for the applicants/accused relied on the judgments of the following case laws:-

- (a) Vikky Pachauri versus Union of India, Crl.A./53/2021 of the Gauhati High Court, dated 03.04.2024;**
- (b) Mohammed Khalid and another versus The State of Maharashtra, Criminal Appeal No.1610 of 2023, dated 01.03.2024.**
- (c) Janki Dass versus State of Haryana, CRA-S-412-SB-2006 (O&M), High Court of Punjab and Haryana at Chandigarh, dated 24.05.2024.**
- (d) Amjad Khan @ Akram @ Ajju s/o. Shri. Nazar Hussain Versus State of Rajasthan, High Court Rajasthan at Jodhpur, 2024: RJ-JD:24228, decided on 27.05.2024.**
- (e) Order of this Bench in the case of Pramod Arun Yeole versus The State of Maharashtra, Bail Application No.156 of 2024, dated 11.01.2024.**
- (f) Yusuf @ Asif versus State, Criminal Appeal No.3191 of 2023 (Arising out of SLP (Crl) No.3010 of 2023) dated 13.10.2023.**
- (g) Simarnjit Singh vs. State of Punjab, Criminal Appeal**

No.1443 of 2023 (Arising out of S.L.P. (Crl.) No.1958 of 2023) dated 09.05.2023.

(h) Pramod Arun Yeole vs. The State of Maharashtra, Bail Application No.156 of 2024, dated 11.03.2024 of Bombay High Court Bench At Aurangabad.

(i) Santosh Pandurang Parte vs. Amar Bahadur Maurya and another, Bail Application No.4125 of 2021, dated 19.07.2023.

8. The prosecution has strongly opposed the applications. It has been argued that the seized contraband were Schedule H1 drug and psychotropic substances were found in the possession of the accused. The said drug falls under the NDPS Act. It is harmful to human life. The charge sheets against the applicants have been filed. After receiving the Chemical Analyzer's report, the proceedings for the destruction of samples under Section 52A of the NDPS Act would be completed.

9. The C.A. report is now available. It reflects in the case of applicant - Sahil that the substance drawn during the raid shows that the sample does not give an identification test for the presence of codeine phosphate. Hence, it was declared as spurious vide Section 17(b)(d) of the Drugs and Cosmetics Act, 1940 and Rules thereunder.

10. Further, the learned A.P.P. argued that Section 50 of the

NDPS Act has been complied with. Bare recovery of samples and then drawing seizure panchanama on the spot is not illegality. Section 52-A speaks of the disposal of seized narcotic drugs and psychotropic substances. Sub-section (2) of Section 52-A provides that after the contraband [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized, it should be forwarded to the officer-in-charge of the nearest police station or to the Officer empowered under section 53, and such Officer referred to in sub-section (1) shall prepare an inventory of such contraband with details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying the particulars of the contraband under this Act and make an application to the Magistrate for the purpose of (a) certifying the correctness of the inventory so prepared; or (b) taking, in the presence of such Magistrate, photographs of [such drugs or substances or conveyances] and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

11. Reading the above Section, the learned A.P.P. has vehemently argued that drawing the samples on the spot of the incident for C.A. test is not bad in law, and that is not the ground for granting bail.

12. In both cases, the common thread of arguments is that none of the provisions under the NDPS Act has been violated. The legal notice of their physical examination was correctly served. The offer was given to them to get searched before the Gazetted Officer. If such an Officer is a party to the raiding party, it is also not bad in law. Section 52-A speaks about the disposal of the contraband after the seizure, and the Magistrate is empowered only to certify the correctness of the inventory so prepared or taking photographs of contraband, etc.

13. To bolster the arguments, the learned A.P.P. relied on the following cases;

(a) *Sunil Sheshrao Pawar vs. State of Maharashtra through PSO PS Mehkar, Taluka Mehkar, District Buldana, High Court Bombay, Nagpur Bench, Criminal Application (BA) No.679 of 2023, dated 12.02.2024 : (2024:BHC-NAG:1678).*

(b) *Mukesh Rajaram Chaudhari vs. The State of Maharashtra, Bail Application 54 of 2023, dated 27.09.2023;*

(c) *Ranjan Kumar Chadha versus State of Himachal Pradesh, 2023 LiveLaw (SC) 856.*

14. Let us deal with Section 50 of the Act first. Section 50 of the NDPS Act speaks of ' the Conditions under which search of persons

shall be conducted'. It has been provided that when any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

15. It has been further provided that if such requisition is made, the Officer may detain the person until he can bring him before the Gazetted Officer. The Gazetted Officer before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made. Sub-section (5) of said Section provides that when an officer duly authorized under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973. However, after a search, the Officer shall record the reasons for such belief which necessitated such search and, within seventy-two hours, send a copy thereof to his immediate official superior.

16. Reading Section 50 of the NDPS Act, it is clear that the Officer authorized under Section 42 of the said Act is about to search any person, he shall take search of a person without delay before the nearest Gazetted Officer or Magistrate if such person so requires.

17. Sub-section (1) of Section 50 of the NDPS Act is clear that such search before the nearest Gazetted Officer appointed of any of the departments mentioned in section 42 or to the nearest Magistrate is the choice of such person whose search is required to be taken. However, suppose the contingency or the situation demands that taking such a person to the nearest Gazetted Officer or nearest Magistrate is not possible, in that case, such Officer may take the assistance of Section 100 of the Cr.P.C. Thereafter, he shall inform his acts so done with reasons to his immediate official superior within seventy-two hours.

18. This Section fell for consideration in many cases. The law has been settled that the person to be searched under the NDPS Act must be apprised of his right under Section 50 of the NDPS Act before he is physically searched, and it is a mandatory requirement. No presumption to that effect can be raised. The Hon'ble Supreme Court has taken this view in the case of ***C. Ali Vs. State of Kerala, 2000 Cr.LJ 3181 SC.***

19. In ***Sholadoye Samual Joy (supra)***, the ratio of ***Vijaysinh*** (supra) was followed, and it was observed that it is imperative on the part of the police officer to apprise the person intended to be searched of his right under Section 50 of the NDPS Act in which the searched only before the Gazetted Officer or Magistrate. It is further held that it is equally mandatory on the part of the authorized Officer to make the suspect aware of the existence of the right to be searched before the Gazetted Officer of Magistrate if he requires, and this requires strict compliance. It is further held that the suspect person may or may not choose to exercise the right provided under Section 52 of the NDPS Act, but so far as the officer is concerned an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before the Gazetted officer or Magistrate.

20. In the case of ***State of Himachal Pradesh vs. Pawan Kumar, 2005(4) SCC 350*** and ***State of Haryana vs. Ranbir Ali, AIR 2006 SC 1096***, it has been held that Section 50 would be applicable only in the cases of personal search of the accused and not when it is made in respect of some package like, article, vehicle, or container, etc., which the accused at the relevant time was carrying.

21. The question is whether the person carrying the contraband on his shoulder or holding a bag in his hand requires a personal

search.

22. In the case of ***Ranjan Kumar Chadha vs State Of Himachal Pradesh 2023 Live Law (SC) 856***, in an appeal, an issue before the Hon'ble Supreme Court was what meaning was assigned to the explanation "to search any person" occurring in Section 50 of NDPS Act. The phrase "to search any person" means (a) search of articles on the person or body of the persons to be searched, (b) would include a search of articles in immediate possession as such bag or other luggage carried by him or in physical possession of such person to be searched, (c) would include the search of bag or luggage which is presumed to be in possession of the person even though it may be lying in a house or railway compartment or at the airport, (d) whether application of Section 50 could be extended to a case of search of a place, a conveyance or a house if the accused is physically present at the time of the search.

23. The facts of the above case were that on the secret information, the Police conducted a raid. The accused consented to be searched before the Police. The accused, carrying a bag with him, was searched and also searched personally. The search of the bag resulted in the recovery of three polythene bags containing Charas with other articles. The quantity of Charas found in the bag was 1 kg. 250 gram. Two samples of 25 grams each were drawn

from the polythene bag containing Charas, and the remaining Charas was sealed.

24. In that case, the case of State of Rajasthan vs. Parmanand and another, (2014) 5 SCC 345 was considered in which it was held in the paragraph 15 that

"15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application""

25. The case, of **State of Punjab v. Baldev Singh, (1999) 6 SCC 172**, was also placed before the Supreme Court. The Hon'ble Supreme Court, in the case of **Parmanand** in which it has been held that it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His rights can be orally communicated to him. However, a joint communication of the right available under Section 50 of the NDPS

Act to the accused would frustrate the very purpose of Section 50 of the NDPS Act.

26. Appreciating the oral evidence of **Ranjan Kumar** (supra), the Hon'ble Supreme Court observed in paragraph 29 that, "thus, from the oral evidence on record as discussed above it is evident that Section of the NDPS Act stood violated for giving a third option of being searched before a police officer." Further, in paragraph No.30 it has been further observed that, "However, the important question that falls for our consideration is whether Section 50 of the NDPS Act is at all applicable to the present case?

27. The facts were appreciated that there is nothing in oral evidence of Police Officers on record to indicate that the search of the person of the accused was also undertaken along with the bag. Therefore, we proceed on the assumption that it is only the bag which was searched which led the recovery of the contraband.

28. Further, in paragraph No.31 it has been observed that, "the question, therefore, that requires consideration is what meaning should be assigned to the phrase "to search any person" occurring in Section 50 of the NDPS Act. Whether the phrase "to search any person" means (a) search of articles on the person or body of the person; (b) would include search of articles in immediate possession as such bag or other luggage carried by him or in physical possession of the person to be searched; (c) would

include search of bag or luggage which is presumed to be in possession of the person even though it may be lying in a house or railway compartment or at the airport; or (d) whether application of Section 50 could be extended to a case of search of a place, a conveyance or a house if the accused is physically present at the time of the search.

29. In paragraph No.36, it has been observed which reads thus;

"36. Considering the aforesaid provisions, the inference which can be drawn is that "to search any person" would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would be the one prescribed under Section 50 of the NDPS Act. In contrast, if search of any building, conveyance or place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under Section 50. However, when a suspected or arrested person is to be searched, then the procedure prescribed under Section 50 comes into operation and the procedure thereunder is required to be followed. This can be seen by referring to Section 100(3) of the CrPC 1973 which provides that where any person is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall

be made by another woman with strict regard to decency. The concealment which is suspected is on the person or about his person."

30. In paragraph No.103, it has observed that considering the contrary view by the Hon'ble Supreme Court in another cases against **Pawan Kumar** (supra) has been referred to and considered in **Sk. Raju** (supra) yet, the Court in **Sk. Raju** (supra) overlooked the fact that in **Pawan Kumar** (supra) also the search was not only of the person of the accused but also of his bag. Even in such circumstances, the Larger Bench in **Pawan Kumar** (supra) took the view that Section 50 would not apply if nothing incriminating is recovered from the person of the accused. Thus, there is an apparent conflict between the two decisions.

31. Finally, in paragraph No.119 it has been observed that, "119. As such, there is no direct conflict between **SK. Raju** (supra) and in **Baljinder Singh** (supra). It is pertinent to note that in **SK. Raju** (supra) the contraband was recovered from the bag which the accused was carrying, whereas in **Baljinder Singh** (supra) the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being "inextricably linked to the person". **Parmanand** (supra) relied upon the judgment in **Dilip** (supra) while taking the view that if both,

the person of the accused as well as the bag is searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would be applicable. However, it is pertinent to note that **Dilip** (supra) has not taken into consideration **Pawan Kumar** (supra) which is of a larger Bench. It is also pertinent to note that although in **Parmanand** (supra) the Court looked into **Pawan Kumar** (supra), yet ultimately it followed **Dilip** (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the large Bench in **Pawan Kumar** (supra). **Baljinder Singh** (supra), on the other hand, says that **Dilip** (supra) does not lay down a good law."

32. The ratio laid down in case of **Pawan Kumar** (supra) was upheld wherein the law has been laid down that the term "person" under Section 50 would mean a natural person or a living unit and not an artificial person i.e., a bag or a briefcase.

33. Considering the ratio laid down in the case of **Pawan Kumar** (supra), the Hon'ble Supreme Court in the case of **Ranjan Kumar** (supra) has observed that a bare reading of Section 50 shows that it only applies in case of personal search of a person and that

would not extend to the search of a vehicle or a container or a bag or premises. The language of Section 50 was interpreted to search has to be in relation to a person as contrasted to a search of premises, vehicles or articles.

34. In the case of ***Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609***, it is observed that it is imperative on the part of the empowered Officer to apprise the person of his right to be searched only before a Gazetted Officer or Magistrate. It is not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it is mandatory that the suspect is made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. This mandatory requirement requires strict compliance. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

35. In paragraph No.31, it has been observed thus, "We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in ***Joseph Fernandez*** (supra) and ***Prabhakar Shankar Dubey*** (supra) is neither borne out from the language of sub-section (1) of Section 50, nor it is in consonance with the dictum laid down in ***Baldev Singh's*** case (supra). Needless to add that the question whether or not the

procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

36. It has also been laid down in the above case that insofar as the obligation of the authorized Officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

37. In paragraph No.32 of the **Vijaysinh** (*supra*), it has been held that “we also feel that though Section 50 gives an option to the empowered Officer to take such person (suspect) either before the nearest gazetted Officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.”

38. Another question referred to the the Larger Bench in **Vijaysinh** case was, whether or not the procedure prescribed had been followed and the requirement of Section 50 had been met, is a matter of trial. his question has been answered that it would neither be possible nor feasible to lay down any absolute formula in that behalf.

39. After analyzing the law, it has been pronounced that where the physical search of his wearing apparel or carrying any such contraband in his hand or person, compliance with Section 50 of the NDPS Act is mandatory. However, in case of a search of anything other than physical search or bag carried on his person, notice under Section 50 of the NDPS Act is not mandatory.

40. Section 52A of the NDPS Act speaks of the disposal of seized narcotic drugs and psychotropic substances. This Court in the case of **Sunil** (supra) relied on the view of this Court taken in **Mukesh** case (supra).

41. The accused raised serious objection against drawing samples on the spot for being sent to the chemical analyzer and claimed that it is not permissible having regard to the mandate of Section 52A of the NDPS Act. Therefore, whether the applicant was entitled to be enlarged on bail was the question before the Court. In that case, the cases of **Mohanlal (supra) and**

Simranjit Singh (supra) were referred to. This Court in ***Mukesh*** (supra) has referred to Rules 2022 and observed that, as per new 2022 Rules, now, different procedure is laid down. After seizure, the contraband needs to be produced before the Magistrate and then samples are to be drawn and then sent to the Chemical Analyser. The contention on behalf of applicant is earlier lacunae was taken care in the Rules.

42. In paragraph No.16, it is observed thus;

"16. There was no need to send the samples which were drawn before the Magistrate to the Chemical Analyser, prior to 2022 Rules. Now the rules have cleared the controversy."

43. In paragraph No.17, it is observed thus;

"17. So, I feel that merely because spot samples are taken, it does not violate the provisions of Section 52A of the NDPS Act for the simple reason that it does not contain provision for taking samples at the spot but it deals with different situation. So, the contention raised in that on behalf of applicant does not appeal to my conscience."

44. In paragraph No.18, it is observed thus;

"18. It is also observed that, it is true that in case of ***Simranjit Singh (supra)***, Hon'ble Supreme Court had refused to accept the evidence of drawing samples on the spot and conviction was set aside."

45. In **Mukesh** (*supra*), the recovery of contraband was before Rules, 2022. Hence, the bail was refused. However, in the case on hand, the recovery was after Rules 2022. Therefore, **Mukesh's** case does not assist the learned A.P.P.

46. Learned A.P.P. further relied on the case of **Saddam Alam** (*supra*). In that case also, bail was sought for the violation of Section 52A of the NDPS Act. In that case, Section 52-A of the NDPS Act was also discussed the Standing Order 1/88 dated 15.03.1988 issued by the Narcotics Control Bureau. Referring to the relevant portion of Section 52-A of the NDPS Act, the Court finally held that the validity of the proceedings under Section 52-A of NDPS Act cannot be examined at the stage of consideration of bail, and it has to be decided during the trial.

47. Recently, the Honourable Supreme Court, in the case of **Yusuf @ Asif** (*supra*) had an occasion to deal with Section 52A of the NDPS Act. In paragraph No.16, it has been observed that in the absence of material on record, it established that the samples of seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that said seized contraband and samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands dismissed.

48. The Honourable Supreme Court, in the above case has crystalized that compliance with Section 52A is mandatory. If it is not complied with, there would be no valid piece of evidence, and the trial would vitiate.

49. In the case of applicant - Sahil Shah Sattar Shah, the Investigating Officer served the notice upon the applicant, informing the reason for his apprehension that bears his signature. However, notice under Section 50(1) of the NDPS Act bears a single signature without writing the name of the person signing it. In the said notice, he was asked whether he wanted to have the search before the Executive Magistrate. Further, it has been written that he refused to have a search before the Executive Magistrate and told them that they may take his search. However, there is no endorsement on the said notice with the signature of the accused that he refused to go for search in the presence of the Gazetted Officer or the Officer appointed under Section 42 of the NDPS Act or Magistrate. This seems to be an apparent defect in apprising the applicant of his right under Section 50 of the NDPS Act.

50. As far as drawing samples on the spot is concerned, recovery was done from the plastic bags, which were in his hand. The Police took personal or physical search as well as the search of the bags containing contraband. Nothing has been recovered from his

person. The contraband has been seized from the plastic bag.

51. In the case of applicant - Ajay s/o. Raju Kothari, the Investigating Officer served notice upon him for personal search of photographer and police officers. The notice allegedly issued under Section 50 of the NDPS Act nowhere discloses that the accused was apprised of his right to have a physical search before the Gazetted Officer only. Therefore, there was no compliance with Section 50 of the NDPS Act.

52. So far as Section 52-A of the NDPS Act is concerned, from the case laws discussed above, it can be summarized that upon seizure of the contraband it is to be forwarded to the officer-in-charge of the nearest police station or to the Officer empowered under Section 53, who has to prepare an inventory of seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified the samples drawn in presence of Magistrate and list thereon being certified alone would constitute primary evidence for the purpose of trial. Therefore, submission of the learned A.P.P. that merely taking the samples soon after the seizure on the spot is not bad in law and it could not raise the suspicion about the seizure, could not be appreciated.

53. The Hon'ble Supreme Court has crystalized Section 50 and 52A of the NDPS Act and laid down the law that compliance of

Section 50 and 52A of the NDPS Act is mandatory.

54. Considering the facts of the case and the ratio laid down in the various cases discussed above, the Court believes that there was no compliance of Sections 50 and 52A of the NDPS Act. Therefore, the applicants deserve bail. Hence, the order:-

ORDER

- i) The bail applications are allowed.
- ii) Applicant - Sahil Shah Sattar Shah in Bail Application No.639 of 2024 and applicant - Ajay s/o. Raju Kothari in Bail Application No.1160 of 2024, be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount each, in the above crimes for the aforesaid offences, on the conditions that,
 - (a) they should furnish their residential proof and cell phone numbers with the Investigating Officer with an undertaking that they would not change it till conclusion of the trial;
 - (b) they should not leave their residence without prior permission of the Court;
 - (c) they should not involve in the similar crimes;
 - (d) they should attend the trial on each and every effective date.

(S. G. MEHARE)
JUDGE