

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1259 OF 2024

Sachin Ramdas Pawar

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Barhate Patil Avinash N.

APP for Respondent/State : Mr. A.S. Shinde

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 02, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant, who was the conductor in the vehicle allegedly carrying the gunny bags containing green leaves and stems like Ganja seeks bail in Crime No.66 of 2024 registered with Rahata Police Station, District Ahmednagar for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).
3. Learned counsel for the applicant submits that the so-called gunny bags were not owned by the applicant. When the police inspected the goods vehicle, they found some gunny bags packed with the stickers. They opened it and find some substance i.e. the green

leaves and the stems like Ganja. After weighing the same, it was found that it was a commercial quantity. He was just a cleaner of the goods vehicle. He was just accompanying the driver. Therefore, it could not be said that he had a conscious possession.

4. Learned counsel for the applicant insisted for bail on the ground that the alleged notice under Section 50(1) of the NDPS Act was defective for the reason that it was a joint notice. A false record has been created by the investigation officer that after serving the said notice for personal search, the applicant denied to be searched before the gazetted officer. This false creation of document could be seen from the notice which does not bear the endorsement that he denied the search before the gazetted officers.

5. The learned APP has tried his level best to point out that in the case at hand, the alleged contraband was found in the rear side of the goods vehicle. Therefore, serving notice under Section 50(1) of the NDPS Act was just a formality having no effect on the further investigation. In a physical search, nothing was found with them. He would also argue that the alleged contraband was submitted to the Magistrate under Section 52(A) of the NDPS Act and samples were recovered for the first time.

6. The law is well settled that if the investigation officer wanted to physically examine the accused, a notice under Section 50(1) is mandatory. However, if the person carrying the contraband

either in his hands or on head or on any part of the body and only the contraband carried on the person of said person were searched, the compliance of Section 50(1) of the NDPS Act is not essential. The law is also well settled that the joint notice under Section 50(1) to the accused more than one is defective. There is no prescribed proforma of serving the notice under Section 50(1) of the NDPS Act. It is also not essential that such notices should be in writing. The Court is of the opinion that when the written notice under Section 50(1) of the NDPS Act was served, a written endorsement of the accused denying personal search before the gazetted officer must reflect on such notice. Serving such notice is a backbone of the action taken against the accused under the NDPS Act. The notice under Section 50(1) of the NDPS Act appears defective and raises a doubt about the physical search of the applicant. Apart from that, the goods seized were packed and transported in the goods vehicle provided on freight charges. The applicant was the cleaner. So, it would be a matter of investigation whether he had a conscious possession and knowledge of containing the Ganja like contraband in the gunny bags. For the above reasons, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.

(4)

(ii) Applicant, Sachin Ramdas Pawar, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that;

(a) The applicant should not tamper with the prosecution witnesses and should attend the trial on each and every date.

(b) The applicant should not involve in identical crime.

(S.G. MEHARE, J.)