

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1458 OF 2024

Ajay Rajendra Kanekar	...	Applicant
V/s.		
State of Maharashtra	...	Respondent

Mr. Raju Suryawanshi, for the applicant.

Mr. Sameer Mangaonkar, APP, for the Respondent / State.

CORAM : ANIL S. KILOR, J.

DATE : 30TH AUGUST, 2024.

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1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.86 of 2023, registered with Sangmeshwar Police Station, Ratnagiri for the offences punishable under Sections 8(c), 21(c), 22(c) and 26 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NPDS Act').
3. There are no antecedents against the applicant of similar nature or otherwise. In the backdrop, the learned counsel for the applicant argues that there is no compliance of section 50 (1) of the NDPS, Act and to substantiate the same he has pointed out that there is no written waiver by the applicant.

4. On the other hand, the learned APP, while strongly opposing the application, has pointed out that a written intimation was given to the applicant that if he desires his search would be conducted by gazetted officer of any department or by a Magistrate. It is pointed out that below the said written intimation there is a written waiver by the applicant.

5. In reply, the learned counsel for the applicant points out that the said written waiver is not in the handwriting of the applicant but it was written by the officer himself. To substantiate this, he has pointed out the written intimation issued to all the accused persons individually. It is to be noted that in all the intimations the written waiver is in the same handwriting. Thus, I have no doubt that in this case waiver is prima facie a farce. Furthermore, there is a printed matter of waiver also, which shows that it was pre-supposed by the officer that accused would waive their right.

6. Thus, considering the above referred glaring fact, it cannot be said that there was a compliance of section 50 of the NDPS, Act or there was a waiver by the applicant of his right of being searched by Magistrate or gazetted officer.

7. In the circumstances, as there is no compliance of section 50 of NDPS Act, it creates doubt about the prosecution story. Moreover, considering the fact that there are no antecedents against the applicant, I am of the opinion that the applicant is entitled for grant of bail. Accordingly, I pass the following order:

ORDER

- (i) Criminal Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No.86 of 2023, registered with Sangmeshwar Police Station, Ratnagiri for the offences punishable under Sections 8(c), 21(c), 22(c) and 26 of the Narcotic Drugs and Psychotropic Substances Act, on furnishing P.R.Bond of Rupees Twenty-five Thousand with one solvent surety in the like amount;
- iii) The applicant shall attend the said Police Station on 1st and 16th day of every month between 10.00a.m 11.00 a.m, till the conclusion of the trial except on the date of trial;
- iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- v) Liberty is granted to the State for cancellation of bail if the applicant commits similar offence;
- vi) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason.

(ANIL S. KILOR, J)