



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.60 OF 2024**

|                             |     |            |
|-----------------------------|-----|------------|
| Mohammad Murad Khan @ Chotu | ... | Applicant  |
| versus                      |     |            |
| The State of Maharashtra    | ... | Respondent |

Ms. Lochan Chandka, for Applicant.  
Mr. S.R.Agarkar, APP for State.

**CORAM: N.J.JAMADAR, J.**

**DATE : 9 JANUARY 2024**

**P.C.**

1. Heard the learned Counsel for the parties.
2. This is an application for bail in connection with C.R.No.585 of 2023 registered with Kashimira Police Station for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. On 16 August 2023 in a chance recovery, accused No.1 Sachin Mishra was apprehended with contraband mephedrone (MD) weighing 24.7 gms which is an intermediate quantity. Accused No.1 made a disclosure statement that he was purchasing mephedrone from the applicant. Thereupon, the applicant came to be apprehended. During the course of search, the applicant was found in possession of 31 gms of mephedrone.
4. Learned Counsel for the Applicant submitted that the applicant was allegedly found in possession of 31 gms of mephedrone and, therefore, rigours of

Section 37 of the Act, would not be attracted as it is not a commercial quantity. Learned Counsel further submitted that co-accused Sachin Mishra, on the basis of whose statement the applicant came to be apprehended, has already been granted bail by this Court by an order dated 14 December 2023 in BA 3966 of 2023.

5. I have perused the order passed by this Court in BA No.3966 of 2023 dated 14 December 2023. This Court had recorded a prima facie view that since the applicant and co-accused were both independently found in possession of intermediate quantity, rigours of Section 37 of the Act would not apply. Even if it was assumed that Section 29 of the Act, came into play, there was a breach of Section 50(1) of the Act. Therefore, the accused was entitled to the benefit thereof. The observations in paragraphs 7 and 8 read as under :

“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 Afaq 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.”

6. Learned Counsel for the Applicant submitted that the aforesaid reasons

apply with equal force to the applicant.

7. Learned APP would submit that the non-compliance of Section 50 of the Act would be a matter for trial. In the face of the material on record, the applicant does not deserve the relief of bail.

8. I find it difficult to accede to the submissions on behalf of the prosecution. Prima facie, the applicant and co-accused Sachin Mishra are similarly circumstanced. Both were allegedly found in possession of intermediate quantity of mephedrone. Prima facie, the provisions contained in Section 29 of the Act do not seem to be attracted.

9. It is imperative to note that the same taint which has been attributed to the compliance of the provisions contained in Section 50 qua the accused Sachin Mishra is also attributable to the compliance thereof qua the applicant. From the perusal of the panchanama dated 18 August 2023 as well as in the notice given to the applicant under Section 50 of the Act, it becomes evident that the police Inspector, Anti-Narcotic Cell proclaimed that being a Gazetted Officer, he had a right to cause search of the applicant. Therefore, prima facie, breach of Section 50(1) of the Act is evident. Resultantly, the applicant is also entitled to same dispensation. On balance, I find that the twin conditions of Section 37 of the Act are satisfied. The Court is not informed that there are antecedents of the applicant. It may, therefore, be unlikely that the applicant will commit any offence while on bail.

10. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Mohammad Murad Khan @ Chotu be released on bail in C.R.No.585 of 2023 registered with Kashmirira Police Station, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the learned Sessions Judge.
- (iii) The applicant shall mark his presence before the Kashmirira police station on first Monday of every month in between 11 am to 1 pm till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.
- (v) 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) The applicant shall surrender his passport to the investigating officer. If

the applicant does not have passport, he shall file an affidavit to that effect.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

**( N.J.JAMADAR, J. )**