

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3813 OF 2022

Mohammad Bilal Nasir Khan S/o
Nasir Khan

.. Applicant

Vs.

Union of India & Anr.

.. Respondents

.....
Ms. Sayed Shabana M. Ali for the applicant
Ms. Rashmi Tendulkar, APP for the respondent – State
Ms. Ameeta Kuttikrishnan for the respondent no.1
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 8th MARCH, 2024.

P.C.

1. Heard learned Counsel for the applicant and the learned Special Public Prosecutor.
2. At the outset, learned Counsel for the applicant has invited my attention to an order passed by the Special NDPS Court on 3rd January 2022 in respect of one Shakeel Gulam Gosh Shaikh arising out of the same crime.

3. The trial Court, apart from the other reasons, has also observed as regards non-compliance of Section 50 of the NDPS Act and, therefore, granted bail. Learned Counsel for the applicant has, therefore, prayed for release of the applicant on the ground of parity.

4. Learned trial Court while granting bail to the co-accused drew support from a judgment of this Court in case of **Dharamveer Sharma Vs. State of Maharashtra**, reported in 2001(5) BCR Cri.(9) as well as in the case of **Afaque Asif Sayyed Vs. The State of Maharashtra in BA 1145/2015**. It is observed 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 Sec.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. In view of the same, the appraisal as contemplated under Sec.50(1) of the NDPS Act get vitiated.”

5. A bare look at the panchanama dated 31.01.2021 would reveal that the Officer of the raiding team after accosting the applicant asked him whether he had been in possession of any contraband. The applicant thereafter answered that he possess the contraband in his pocket and accordingly, the applicant removed the packet containing contraband and handed it over to the raiding team. It appears that subsequently, Notice under Section 50 of the NDPS Act was given to the applicant, which is not the purport of Section 50 of the NDPS Act.

6. A bare look at the Notice under Section 50 of the NDPS Act does not indicate as to whether the applicant was made aware about his legal right to have a personal search in the presence of any gazetted officer or the Magistrate duly empowered under Section 50 of the NDPS Act. The only endorsement which appears on the notice is the signature of the applicant with an endorsement “received copy”.

7. In view of this glaring discrepancy and in light of the fact that the co-accused has already been granted bail by this Court, the applicant also deserves to be released on the ground of parity. It is

informed that the charge has not yet been framed and, therefore, it would take time to conclude the trial. As such, the application is allowed by passing the following order:-

ORDER

- (a) The application is allowed.
- (b) The applicant be released on executing a P.R. bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the Special Court in NDPS Special Case No. 867 of 2021 for the offence punishable under Section 8(c) r/w 22(c), 27, 27A and 29 of the NDPS Act.
- (c) The applicant shall report the office of the NCB, Mumbai on first Saturday of every month between 10.00 a.m. to 1.00 p.m. till charge is framed.
- (d) After framing the charge, the applicant shall attend each date of the trial Court, scrupulously.
- (e) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case.
- (f) The applicant shall furnish his residential address and

contact details forthwith to the respondent and the Special Court. The applicant shall inform, in case of any change in his contact details or residential address to the respondent as well as the Special Court.

(g) In case of two consecutive defaults either in attending the respondent or the trial Court or in case of breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of his bail.

8. The application stand disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)