

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

CRIMINAL BAIL APPLICATION NO. 686 OF 2024

Anehe Kingsley Chinedu ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Rajendra Bidkar, Advocate for Applicant.

Mr. S. S. Chaudhari, APP for State-Respondent.

Mr. Shrikant Naidu, API , PSI, Present.

CORAM:- ANIL S. KILOR, J.

DATED:- 30th SEPTEMBER, 2024

PC:-

- 1) Heard.
- 2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 50 of 2022 registered with Turbhe Police Station, Navi Mumbai, for the offences punishable under Sections 8 (c), 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 14 of the Foreigners Act, 1946, Section 12 of the Passport Act, 1967 and Section 7(3) of the Foreigners Order 1948.

- 3) The only argument made by the learned Counsel for the applicant is that the samples which were drawn before the learned Magistrate were not sent to the FSL and hence, there is no compliance of Section 52-A of the NDPS Act, 1985.
- 4) The learned APP is not disputing the said position. The learned APP after taking instructions from the concerned Investigating Officer, is not disputing the said position.
- 5) The Hon'ble Supreme Court of India in the case of *Union Of India vs . Mohanlal And Anr*¹ has held thus.

...“15. It is manifest from Section 52A (2)(c) (*supra*) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

1 (2016) 3 SCC 379

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure...”

6) In view of the observations of the Hon’ble Supreme Court of India since there is no compliance of Section 52-A of the NDPS Act, 1985, I am of the opinion that this is a fit case for grant of bail. Accordingly, I pass the following order.

ORDER

(i) The Bail Application is allowed;

(ii) It is directed that the Applicant shall be released on bail in Crime No. 50 of 2022 registered with Turbhe Police Station, Navi Mumbai, for the offences punishable under Sections 8 (c), 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 14 of the Foreigners Act, 1946, Section 12 of the Passport Act, 1967 and Section 7(3) of the Foreigners Order 1948, on furnishing PR. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;

(iii) The Applicant shall attend said Police Station on 1st and 16th day of every month between 12.00 noon and 2.00 pm till conclusion of 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 in case Applicant breaches any of the conditions and/or 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.]