

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1172 OF 2024

Uzo Stephan Samuel ... Applicant.

V/s.

Union of India & oth. ... Respondent.

Mr Taraq Sayed a/w Ms Ashwini Achari, Mr Anish Pereira & Ms Alisha Parekh, Advocate for Applicant

Mr Shreeram Shirsat, Spl.PP for Union of India

Ms Poonam P. Bhosale, APP for Respondent/ State.

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CORAM : ANIL S. KILOR, J.

DATED : OCTOBER 24, 2024.

PC:

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in File/Crime No.NCB/MZU/CR-75/2021, registered with Narcotics Control Bureau, Mumbai (N.C.B.) for the offences punishable under Section 8(c) read with Sections 21(c), 28, 29 and 35 of the Narcotic Drugs and Psychotropic Act, 1985 (“NDPS Act” for short).

3. The learned counsel mainly argued on the point of compliance of Section 50 of the NDPS Act. It is argued that the search was conducted by an officer who was part of the Investigating Party and therefore, such officer cannot be called as an 'independent officer'.

4. The Hon'ble Supreme Court of India in the case of *Vijaysinh Chandubha Jadeja ..vs.. State of Gujrat*, reported in **(2011)6 SCC 609** has held that the obligation under sub-Section (1) of Section 50 of the NDPS Act is mandatory and requires strict compliance. It is further held that failure to comply the provision would render the recovery of illicit articles, suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit articles from the person of the accused during such search.

5. Similarly, in case of *State of Rajasthan ..vs.. Parmanand & Anr.*, reported in **(2014) 5 SCC 345** the Hon'ble Supreme Court of India, considering the facts of the said case, has observed that the accused were apprised that they could be searched before the nearest Magistrate or before the nearest Gazetted Officer or before the Superintendent, who is part of the raiding party. The Hon'ble Supreme Court of India, considering the above referred fact held that the third option was held to be in breach of Section 51 of the NDPS Act. It is observed that the idea behind taking an accused to the nearest Magistrate or nearest Gazetted Officer, if he so requires is to give him a chance of being searched in

presence of an independent officer and it was improper to give the accused third alternative of being searched before the Superintendent, who was part of the raiding party and who could not be called as an independent officer.

6. The object with which the right under Section 50(1) of the NDPS Act by way of the safeguard has been conferred i.e. to check the misuse of power, to avoid harm to innocent persons and to minimize the allegation of planting or foisting of false cases by the law enforcement agencies.
7. In the present matter, the information note filed along with the application at page 35 of the record book shows that the Investigation Officer Shri K.Kiran Babu was the Officer was authorized to constitute a team and to take necessary action as per law, on receiving an information that the applicant was to deliver substantial quantity of Cocaine to an unknown person.
8. Furthermore, the panchnama shows that before commencing applicant's person search Shri K. Kiran Babu, Investigating Officer informed verbally and also in writing that under Section 50 of the NDPS Act they have a right to be searched in presence of a nearest Gazetted Officer or a Magistrate. Thereupon, he discloses verbally as also in writing that he would prefer to be searched before any Gazetted Officer.

9. It is further clear from the panchnama that the Investigating Officer Shri K.Kiran Babu called Gazetted Officer Shri V.V.Singh, Superintendent, N.C.B. Mumbai before taking personal search. Thereupon, the Gazetted Officer Shri V.V.Singh, N.C.B. Mumbai reached at the spot and then a personal search was conducted.
10. In the present matter, the N.C.B. Mumbai is the Investigating Agency and thus, Shri V.V. Singh, Superintendent is part of the Investigating Agency. Thus, it cannot be said that through an independent officer the search was carried out.
11. In addition to this, on notice under Section 50 of the NDPS Act given to the applicant there is no signature of panchas.
12. A coordinate Bench of this Court in the case of *Eze John ..vs.. Union of India and Anr.* Vide order dated 04/04/2024 passed in **Bail Application No. 1754 of 2023** has observed thus :

“20. An endeavour has been made by the prosecution to show that there was compliance of the mandate contained in Section 50 of the Act, by banking upon the notice purportedly given under Section 50 of the Act (page 43). I find substance in the submission of Mr. Sayed that, prima facie, the said notice does not advance the cause of the prosecution. The matter can be appreciated from two perspectives. One, intrinsic evidence of the notice. Two, the absence of reference to the said notice in the seizure panchanama.

21. On the aspect of the intrinsic evidence of the notice, evidently panch witnesses have not signed the said notice. Thus, prima facie, it cannot be urged that the said notice was given to the applicant and, consequently, he was apprised of his right under Section 50 of the Act, in the presence of the panch

witnesses. In ordinary course, had the notice been given during the currency of the panchanama, the panch witnesses ought to have signed the said notice. A useful reference in this context can be made to an order passed by this Court in the case of Nadeem Abdul Rahim Choughule V/s. The State of Maharashtra¹⁰, wherein repelling the contention of compliance of Section 50 based on such communication (of which there was no reference in the panchanama), it was observed that the said attempt appeared to be an after-thought as the communication did not bear the signatures of the panchas and in the statements of the two panchas, compiled in the chargesheet, there was no mention of such intimation having been given to the accused persons.”

13. Thus, on both the counts renders the recovery of contraband suspects and hence, there is a reasonable ground to believe that the applicant is not involved in the alleged offence and as there are no antecedents against the applicant, it can be said that there is no possibility that if the applicant is released on bail he may repeat the offence.

14. The learned counsel for the respondent No.2-NCB has strongly opposed the application on the ground that proper compliance is there. However, from the above referred observations it is evident that there is no compliance of Section 50(1) of the NDPS Act.

15. In the circumstances, I pass the following order:

- i) The Criminal Application is allowed.

- ii) It is directed that the applicant shall be released on bail in connection with File/Crime No.NCB/MZU/CR-75/2021, registered with Narcotics Control Bureau, Mumbai (N.C.B.) for the offences punishable under Section 8(c) read with Sections 21(c), 28, 29 and 35 of the Narcotic Drugs and Psychotropic Act, 1985, on furnishing P.R.Bond in the sum of Rupees Twenty Five Thousand with one solvent surety in the like amount;
- iii) The applicant shall attend the Office of the Investigating Officer, N.C.B., Mumbai on every Sunday of each month between 10:00 am and 11:00 am, till conclusion of the trial, except on the date of the trial and shall cooperate in the investigation.
- iv) The applicant shall surrender his passport, if any in his possession and if not already surrendered to the I.O.
- v) 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;
- vi) Liberty is granted to the State to apply for cancellation of bail if the applicant commits similar offence or breaches any condition for grant of bail.

- vii) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)