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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1564 OF 2024

Oniongo Thomas	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Vikas Chavan a/w Kamlesh S., Iqbal Jalgaonkar and Nilesh Bangar
for the Applicant.

Mr.S.V. Gavand, APP for the State.

PSI Tanaji Savant, Mira Road Police Station, present.

CORAM : BHARATI DANGRE, J

DATE : 2nd AUGUST, 2024.

P.C.

1] On 28.03.2024, the Bail Application was permitted to be withdrawn with liberty to file afresh on the ground of non compliance of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, as this ground though available, was not specifically urged in the Application.

2] Upon this liberty being conferred, the present Application is filed wherein, ground No.6 specifically state that there is no adherence to the provisions of Section 52A of the NDPS Act, which is now held to be

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mandatory. It is also urged that on the spot, samples were taken and they were sent for chemical analysis, which gave a positive report.

There is inherent defect in the procedure as held by the Apex Court in the case of Union of India v/s Mohanlal and Anr. (2016) 3 SCC 379.

In addition, the learned counsel has also placed reliance upon the decision of the Apex court in the case of Simarnjit Singh vs. State of Punjab, 2023 SCC OnLine SC 906, where categorically it is held that, act of drawing samples at the time of seizure is not in conformity with the law laid down in Mohanlal (*supra*) and it creates doubt about prosecution case that the substance that was recovered, was a contraband.

3] The learned APP Mr. Gavand, do not dispute that the procedure prescribed under Section 52A was not followed and even till date there is no procedure adopted to that effect.

In the wake of the above, in the light of settled position of law and relying upon the decision in the case of Mohanlal (*supra*) and Simarnjit Singh, time and again it has been held to be a grave lacunae in the prosecution case and since there exist a reasonable ground for believing that he is not guilty of the offence, the Applicant deserve his release on bail.

4] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, the following order :-

ORDER

- (a) Bail Application is allowed.
- (b) The Applicant Oniongo Thomas shall be released on bail in connection with C.R.No.14 of 2021 registered at Mira Road Police Station (Special Case No.333/2021) on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned Police Station once on first Monday of every month between 10.00 a.m. to 12.00 noon.
- (d) The Applicant shall regularly attend trial, on every date, unless exempted.
- (e) Upon release, the Applicant shall furnish his contact number and permanent residential addresses to the Investigating Officer and shall keep him updated in case of change in the same.

[BHARATI DANGRE, J.]