

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1723 OF 2024

Suraj Banwarilal Gupta ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr Lochan Chandka, Advocate for Applicant

Ms Veera Shinde, APP for the State.

PSI B.P.Dube, P.S. Virar

RAJIV
BABARAOJI
RAUT
Digitally signed
by RAJIV
BABARAOJI
RAUT
Date: 2024.09.26
10:30:03 +0530

CORAM : ANIL S. KILOR, J.

DATED : SEPTEMBER 25, 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.373 of 2021, registered with Virar Police Station, District : Palghar for the offences punishable under Sections 8(c), 20, 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short).
3. The learned counsel for the applicant argues that in the present matter while carrying out search of the applicant, the applicant

was informed that if he wishes the search can be carried out before the Magistrate or any Gazetted Officer. It is further argued that, however, it was not pointed out to the applicant that it is his right to be searched by the Magistrate or any other Gazetted Officer under Section 50 of the NDPS Act. It is therefore, submitted that this is a case where there is no compliance of Section 50 of the NDPS Act.

4. On the other hand, the learned APP has strongly opposed the application and submits that since the officer informs the applicant that if he wishes he can be taken to the Magistrate or a Gazetted Officer to carryout search, is the compliance. The learned APP further opposed the application on the ground that there are 7 antecedents against the applicant, including the offences under the NDPS Act as well as bodily offences under the Indian Penal Code.
5. The said argument of the learned APP cannot be accepted in view of the judgment of the Hon'ble Supreme Court of India in the case of *Ashok Kumar Sharma ..vs.. State of Rajasthan*, dated 09/01/2013 passed in **Criminal Application No. 817 of 2008** and cited by the learned counsel for the applicant, wherein the Hon'ble Supreme Court of India has observed as under :

“8. The above statement of PW1 would clearly indicate that he had only informed the accused that he could be searched before any Magistrate or a Gazetted Officer if he so wished. The fact 7 that the accused person has a

right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or a Magistrate was not made known to him. We are of the view that there is an obligation on the part of the empowered officer to inform the accused or the suspect of the existence of such a right to be searched before a Gazetted Officer or a Magistrate, if so required by him. Only if the suspect does not choose to exercise the right in spite of apprising him of his right, the empowered officer could conduct the search on the body of the person.

9. We may, in this connection, also examine the general maxim "ignorantia juris non excusat" and whether in such a situation the accused could take a defence that he was unaware of the procedure laid down in Section 50 of the NDPS Act. Ignorance does not normally afford any defence under the criminal law, since a person is presumed to know the law. Indisputedly ignorance of law often in reality exists, though as a general proposition, it is true, that knowledge of law must be imputed to every person. But it must be too much to impute knowledge in certain situations, for example, we cannot expect a rustic villager totally illiterate, a poor man on the street, to be aware of the various law laid down in this country i.e. leave aside the NDPS Act. We notice this fact is also within the knowledge of the legislature, possibly for that reason the legislature in its wisdom imposed an obligation on the authorized officer acting under Section 50 of the NDPS Act to inform the suspect of his right under Section 50 to be searched in the presence of a Gazetted Officer or a Magistrate warranting strict compliance of that procedure.

10. We are of the view that non-compliance of this mandatory procedure has vitiated the entire proceedings initiated against the accused-appellant. We are of the view that the Special Court as well as the High Court has committed an error in not properly appreciating the scope of Section 50 of the NDPS Act.

The appeal is, therefore, allowed. Consequently the conviction and sentence imposed by the Sessions Court and affirmed by the High Court are set aside. The accused-appellant, who is in jail, to be released forthwith, if not required in connection with any other case.”

6. In the present matter, the facts are similar as in the judgment cited supra. In the present matter also the applicant was not informed that he has a right to be searched before a Magistrate or any Gazetted Officer, but it was only informed that he could be searched before the Magistrate or any Gazetted Officer.
7. In the circumstances, in view of the above referred judgment in the case of *Ashok Kumar Sharma* (supra), I am of the opinion that *prima-facie*, there is no compliance of the provisions of Section 50 of the NDPS Act.
8. Accordingly, 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 Crime No.373 of 2021, registered with Virar Police Station, District : Palghar for the offences punishable under Sections 8(c), 20, 22(c) of the Narcotic Drugs and Psychotropic Substances 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 concerned Police Station on first day of each month between 10:00 am and 11:00 am, till conclusion of the trial, except on the date of the 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 if the applicant commits similar offence or breaches any condition for grant of bail.
- vi) 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)