

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

CRIMINAL BAIL APPLICATION NO. 2002 OF 2024

Pournima Raju Rathod

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. R. Majumdar, for the applicant.

Mrs. S. M. Yadav, APP for State-Respondent.

CORAM:- ANIL S. KILOR, J.

DATED:- 19th AUGUST, 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.135 of 2024, registered with Tulinj Police Station, Palghar for the offences punishable under Sections 20(c), 8(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act, 1985").

3) In the present matter, bail has been sought on the ground that the search of the applicant, who is a lady, was conducted by the police constable, who is not Authorised Officer to take the search. Furthermore, the search was conducted after sunset, and for that purpose, though permission was obtained in this regard, the Judicial Magistrate First Class, Court No. 3, Vasai, in the order dated 14th

February, 2024 has categorically directed that arrest of the accused shall be made by a lady police officer strictly by following the legal provisions and guidelines of the courts; the said directions were not complied with and the arrest of the applicants was made by a male Police Officer namely Sachin Shinde, Assistant Police Inspector.

4) It is further argued that after giving an intimation under Section 50 of the NDPS Act, 1985, there is no waiver in writing by the applicant. The learned Counsel for the applicant, therefore, submits that this is the fit case for grant of bail.

5) On the other hand, the learned APP strongly opposed the application. She points out that the search was not conducted by male officer but it was conducted by the lady Police Officer and in exclusion of the male panchas. She points out that there is a strict compliance of provisions of the NDPS Act, accordingly, she prays for rejection of the present application.

6) Having gone through the charge-sheet and the material filed along with the application, it is evident that since the search was carried out after the sunset, the permission was sought from the Judicial Magistrate First Class. The learned magistrate, vide order dated 14th February, 2024 granted such permission, however, on a condition that arrest of the accused shall be made by lady police officer strictly by following the legal provisions of the guidelines of the Courts.

7) In terms of the Notification issued by the State Government in the exercise of the power of Sub-section (1) of Section 42 of the NDPS Act, 1985, inter alia, all police officers of and above the rank of Head

Constable in the State of Maharashtra are empowered to carry out the search.

8) In the present matter, the search was conducted by a lady constable, who was not empowered by the State Government under Section 42 (1) of the NDPS Act, 1985 to carry out the search. Thus, prima facie the search gets vitiated because of the aforesaid contravention.

9) Furthermore, the arrest shows that the applicant was arrested by a male Officer. Furthermore, there is no waiver by the applicant in writing. Making the signature below the intimation cannot be termed as a waiver unless the accused gives it in writing.

10) All the above referred contraventions give reasonable ground to believe that the applicant is not guilty of the alleged offence and since there are no antecedents, there is no possibility that if the applicant is released on bail, she will commit a similar offence. Hence, 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.135 of 2024, registered with Tulinj Police Station, Palghar for the offences punishable under Sections 20(c), 8(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act, 1985"), on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one local solvent surety in the like amount;

- iv) The Applicant shall attend the said Police Station on every Saturday between 9 am to 10 am, till the conclusion of the trial except on the date of trial;
- 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 cancellation of bail if the applicant commits similar offence.;
- vii. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.
- viii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]