

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2538 OF 2024

Habib Ajij Chaudhari ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr Shailesh Karat a/w Kalpana V. Chate, Sumitkumar Nimbalkar,
Govind Mundhe, Advocate for Applicant

Ms Veera Shinde, APP for the State.

PSI Varsha Kale, Kharghar Police Station

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CORAM : ANIL S. KILOR, J.

DATED : DECEMBER 06, 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.296 of 2023, registered with Kharghar Police Station, District: Navi Mumbai for the offences punishable under Sections 8(c), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short).
3. The learned counsel for the applicant makes a submission that the seizure in the present matter is not a genuine one and it can be seen from the intimation given under Section 50 of the NDPS

Act which was typed in English as if the officer was knowing that the applicant knows English. It is further pointed out that even the statement of the applicant as regards waiving of right to be searched by the Magistrate or any other Gazetted Officer, also typed one and not handwritten. He further points out that immediately below such waiver there is no signature of the applicant, but, it is at the bottom of the said document i.e. below the signature of the officer and the signature of the panchas. He therefore, submits that the notice under Section 50 of the NDPS Act was, in fact, already ready with the officer who took the signature of the applicant on the same. He further points out that there is no mention that the printer and computer was available at the spot.

4. Having perused the notice under Section 50 of the NDPS Act, I find substance in the submission of the learned counsel for the applicant.
5. The learned APP tried to justify the same. However, it is evident from the record that all the other proceedings, including panchnama and Arrest Form, are in Marathi, except the notice under Section 50 of the NDPS Act.
6. Furthermore, the waiver of right to be examined by the Magistrate or some other Gazetted Officer, is not written in the hand of the applicant, but it is typed one, which creates doubt about the strict compliance of the safeguards provided under the Act.

7. Furthermore, as there are no antecedents against the applicant and further considering the period of incarceration of the applicant, which is about one year, I am of the opinion that since there is a reasonable ground to believe that the applicant is not guilty of the alleged offence and since there is no antecedents there is unlikelihood that if the applicant is released on bail he will commit similar offence.

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.296 of 2023, registered with Kharghar Police Station, District: Navi Mumbai for the offences punishable under Sections 8(c), 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 Kharghar Police Station, Navi Mumbai on first day of every 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 to apply 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)