

Amberkar

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

**BAIL APPLICATION NO. 3768 OF 2024**

Mohammed Sajid Mohammed Shah Chaudhary .. Applicant

**Versus**

The State of Maharashtra .. Respondent

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- Mr. Taraq Sayed a/w Ms. Ashwini Achari i/by Mr. Rohit Sawant for Applicant
- Mr. Rushikesh M. Pethe, APP for Respondent - State
- Mr. Manoj N. Kudmate, PSI, Chembur Police Station, Mumbai

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**CORAM : MILIND N. JADHAV, J.**

**DATE : MAY 05, 2025**

**P. C.:**

**1.** Heard Mr. Sayed, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent - State.

**2.** Applicant - accused has filed the present Application for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in connection with C.R. No. 22/2024 registered with Chembur Police Station for offences punishable under Sections 8(c) read with 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS Act**"). Applicant is arrested on 16.01.2024 and since then he is lodged in prison.

**3.** The principal ground for seeking bail as argued by Mr. Sayed is the appraisal letter issued under Section 50 of the NDPS Act to

Applicant which is appended at page No. 45 of the Application. It is *prima facie* seen that the said appraisal letter does not bear endorsement of Applicant save and except to show his thumb impression and signature but that also does not stand identified. The appraisal letter issued to the Applicant is *prima facie* contrary to the specific guidelines issued by the Supreme Court in the case of ***Ranjan Kumar Chadha v. State of Himachal Pradesh in paragraph Nos. 65 and 66 thereof***. The same are reproduced herein below:-

*“65. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that “I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer.” This would lend more credence to the compliance of Section 50 of the NDPS Act. In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.*

*66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:—*

*(i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.*

***(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.***

*(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.*

*(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.*

*(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.*

*(vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.*

*(vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.*

*(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.*

***(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.***

*(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of*

*Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”*

*(emphasis supplied)*

4. That apart on reading the inventory panchanama appended at page No. 47 of the Application, it is *prima facie* seen that there is transgression of provisions of Sections 52A(2) and (3) of the NDPS Act read with Rule 10 of the NDPS (Seizure, Storage, Sampling and Disposal) Rule, 2022 and certification is not in Form 5 as delineated in the case of ***Chandrabhan Janaradhan Yadav v. State of Maharashtra***<sup>1</sup>.

5. *Prima facie* when the aforesaid transgressions are noticed, case of the prosecution stands vitiated. It is an irony that the present Application is filed on 03.09.2024 but it has reached hearing for the first time today before this Court. In that view of the matter, one opportunity is given to the prosecution to ascertain the veracity of the facts which are delineated herein above and apprise the role of Applicant to the Court on the next adjourned date.

6. Stand over to **11th July, 2025**. Liberty to move the Vacation Court is given to the Applicant.

[ MILIND N. JADHAV, J. ]

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1 Order dated 04.03.2025 passed in BA No. 2254/2024 & Connected Bail Applications