

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4535 OF 2024

Mohammed Ishaq Suleman Shaikh	.. Applicant
Versus	
State of Maharashtra	.. Respondent

-
- Mr. Sherali S. Khan for Applicant
 - Ms. Shilpa K. Gajare-Dhumal, APP for State
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2025

P. C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Ms. Gajare-Dhumal, learned APP for State.

2. *Prima facie* dichotomy is pointed out to me in the statement of the complainant which is recorded and appended at page Nos. 32-35. When the said statement is read which is at page No. 33, it is *prima facie* seen that Police Inspector - Mr. Madke has claimed to be the Gazetted Officer before whom the Applicant was required to be searched and the same is confirmed by the trap panchnama of even date appended at page No. 58 wherein the aforesaid issue is taken one step further. In the trap panchnama it is stated that raiding party officials have themselves rather all of them have claimed to be the Gazetted Officers on the basis of which they have obtained consent of

the Applicant. Relevant portion is in paragraph No. 1 on page No. 59 of the Application.

3. Mr. Khan has placed on record recent decision of the Supreme Court in the case of *State of NCT OF Delhi Vs. Mohd. Jabir*¹ wherein Supreme Court while interpreting provisions of Section 42 read with Section 50 of the NDPS Act has categorically held that the the intent behind the provision is to ensure that the person about to be searched is made aware of the option to be taken before a third person other than the one who is conducting the search. (*emphasis supplied*)

4. Learned APP shall take immediate cognizance of the aforesaid issue, take appropriate instructions from the IO as this Court is inclined to pass appropriate orders to determine the Bail Application on 07.02.2025. IO is directed to remain present in Court at 10:30 a.m. on the next adjourned date.

5. Stand over to **7th February, 2025**. To be placed on the Supplementary Board.

[MILIND N. JADHAV, J.]

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1 Order dated 02.12.2024 passed in Criminal Appeal No. 4931 of 2024