

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5002 OF 2024

Firoz Rauf Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Ms. Kainat Sayed a/w. Ms. Deepa Amati and Ms. Sumaiya Khan, Advocates i/by Munira Palanpurwala for Applicant.
 - Ms. Shilpa M. Yadav, APP for Respondent – the State of Maharashtra.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2025

P.C.:

1. Heard Ms. Sayed, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – the State of Maharashtra.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) seeking Bail in connection with C.R. No.303 of 2022 registered with D. N. Nagar Police Station for offences punishable under Sections 8 (c), 22 (c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’).

3. The present case of Applicant is clearly covered by decisions of this Court in the case of *Haji Mohd. Abdul Kadar Bhumedia Vs. The State of Maharashtra*¹; *Arif Akram Shaikh Vs. The State of*

¹ Bail Application No.378 of 2022 decided on 23.08.2022.

*Maharashtra*² and *Sunday Eziko Ezagwu Vs. The State of Maharashtra*³ and *Dilkush Sinai Vs. State of Goa Bench*⁴. From the seizure panchnama dated 23.02.2022 which is appended at page No.33, it is seen that Applicant before me was searched by Police Naik – Mangesh Chavan on the instructions of Police Inspector – Pathan. The said statement is certified by panchas in the panchnama.

4. Though Ms. Yadav, learned APP would vehemently argue that the said recovery was a chance recovery and on overall reading of memorandum of seizure of panchnama, it can be seen that Police Inspector – Pathan was also present and after search and seizure was done by Police Naik – Mangesh Chavan, alleged contraband was handed over to Mr. Pathan who handled the polythene bag, it should be construed that seizure was in accordance with provisions established under Section 42 read with Section 50 of the NDPS.

5. Once it is *prima facie* established that the search and seizure is done by Police Naik from the record of the prosecution and more specifically was in the case of a chance raid, the provisions of NDPS Act are required to be scrupulously followed as observed by this Court in the aforementioned four cases. Reference is drawn to provisions of Section 50 of the NDPS Act which in the sub-section (1) itself refers to the provisions of Sections 41 to 43 of the NDPS Act. The language of

2 Bail Application No.3158 of 2021 decided on 07.02.2023.

3 Bail Application No.3318 of 2023 decided on 29.02.2024.

4 1995 (2) Goa. L.T.

Section 42 of the NDPS Act is clear and unambiguous. Police Naik is unauthorised to carry out search. Search carried out by Police Naik *prima facie* renders the search illegal.

6. Needless to state that this is the record borne out from seizure panchnama appended at page Nos.33 and 34 and it is so held only to restrict my observations for purpose of granting the present Bail Application. In addition reference is also invited to the decision in the case of ***Sunday Eziko Ezagwu Vs. The State of Maharashtra*** (3rd *supra*), wherein this Court has referred to the notification issued by State Government in exercise of its power under sub Section (1) of Section 42 of NDPS Act, *inter alia*, stating that all police officers of and above the rank of Head Constable in the State of Maharashtra are empowered for the purposes of sub Section (1) of Section 42 of NDPS Act.

7. In the case at hand, *prima facie*, the search is conducted by a person / officer who is below the rank of Head Constable. Resultantly the validity, legality of the search and seizure becomes a suspect. Applicant is in custody since 23.12.2022. It is unlikely that the trial would be completed in the near foreseeable future. Hence, in the view of the above I am inclined to exercise the discretion in favour of Applicant.

8. In view of the above, the Applicant is entitled to be enlarged

on bail subject to following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vi) Any infraction of the above conditions shall entail
the prosecution to seek cancellation of this order.

9. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

10. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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