

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 363 OF 2025

Sharib Iqbal Ansari

.. Applicant

Versus

State Of Maharashtra

.. Respondent

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- Mr. Rajendra Rathod a/w Mr. Sohail Ahmed, Mr. Aamir Koradia, Mr. Umer Dalvi, Mr. Sameer Merchant and Mr. Dhruv Jain, Advocates for Applicant.
- Ms. Mahalaxmi Ganpathy, APP for State.
- Mr. D.S. Gaikwad, API, ANC.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 18, 2025

P. C.:

1. Heard.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 7 of 2024 registered with the Officers of ANC Bandra Unit on 25.01.2024 for the offence punishable under Sections 8(c) r/w 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985¹.

3. The Memorandum Panchanama dated 21.04.2024 is appended at page No.80 of the Application. It categorically records the apprehension and arrest of Accused No.1 in a chance recovery at a public place in Grant Road area of Mumbai with commercial quantity

¹ For Short NDPS Act.

of the alleged contraband. On apprehending Accused No.1 he was informed about his right with respect to following the procedure under Section 50 of the NDPS Act. According to prosecution, Accused No.1 accepted letter dated 24.01.2024 which is appended at page No.90 of the Application which is signed by the Police Inspector in the presence of two witnesses and as to whether he has understood what is stated in the said letter or whether he allowed the prosecuting team to search him, there is no remark. There appears to be some signature which is not *prima facie* decipherable.

4. According to learned APP, on taking instructions she would submit that Accused No.1 did not know how to read and write and that is the reason as to why there is no remark mentioned on the letter as to whether he was made to understand his right with respect to taking his search under the provisions of NDPS Act. All that prosecution had to do was to endorse that the Accused did not know how to read and write and he was explained in the language which he understood which the prosecution has not done.

4.1. Section 50 of the NDPS Act envisages conditions under which search of persons shall be conducted. Section 50(1) reads thus:

“Section 50 (1): When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 and section 43, he shall, if such person so requires, take such person without necessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.”

4.2. It is therefore settled position of law that the person to be searched is required to be told about his right under Section 50 before he is searched and that is a mandatory requirement. No presumption to that effect can be raised. If he denies to go to the Gazetted Officer or Magistrate, then his consent for search needs to be recorded on the letter given to him. This duty is cast upon the prosecution team. This is not followed while search and seizure is effected from Accused No.1. Page No. 90 speaks for itself.

4.3. What is intriguing in the present case is that while bringing Accused No.1 from the incident spot where he was arrested, on his disclosure to the Police party inside the vehicle itself goes onto arrest Accused No.2 from another location. Be that as it may arrest of Accused No.2 is done and he is given letter dated 24.01.2024. None of the letters which are given right from the Accused No.1 to Accused No.7 bear the time at which the said letters are given as said letters and arrest of all accused is done in one go within a period of 3 to 4 hours in the area between Grant Road to Mazgaon to Agripada in Mumbai by the police party.

4.4. Letter given to the Accused No.2 at page No.91 categorically mentions the remark that he has understood his right with respect to search to be taken under Section 50 of the NDPS Act

and he has no objection if the police party searches him. This endorsement is absent on the letter of Accused No.1.

4.5. Letter which is appended at Page No. 93 of the Application is given to the Accused No.4 which once again endorses the remark. However, where Accused Nos.4 and 5 whose name are disclosed are arrested together what is seen is that Accused No.4 disclosed the names of Accused Nos. 6 and 7. The letters informing the rights of the further accused who are arrested subsequently and seizure is carried out are all appended at Page Nos. 93 to 96. Once again here it is seen that insofar as Accused No.5 is concerned, he is apprehended along with Accused No.4 but on his letter the said endorsement is absent just like the case of Accused No.1.

5. Ms. Ganpathy, learned APP has argued that it is only on account of the Accused Nos. 1 and 5 not being able to read and write the said remark has not been endorsed and stated on their respective letters which were given to them apprising them of their rights before conducting their search and seizure. She would submit that the prosecution has followed the prescribed procedure insofar as all accused are concerned if the procedure envisaged under Section 50 is seen. Prima facie what the learned prosecutor is arguing is not borne out from the record. If the Accused Nos. 1 and 5 do not know how to read and write then it is not understood as to how they will

understand the contents of the letters given to them which are in Hindi language. If according to prosecution they were explained their right as stated in letter, it ought to have reflected in the letter. It cannot be presumed that they were made aware of their right under Section 50. Rather no presumption to that effect can be raised.

6. Attention is drawn to paragraph Nos. 12 and 13 of the decision of the Delhi High Court in the case of *State Vs. Denis Jauregul Mendizabal*² which reads thus:

“12. The requirements of Section 50 NDPS Act being mandatory, as has been clearly held by the Hon’ble Supreme Court are in consonance with the right of the accused to know of his legal rights. The compliance of such requirements should therefore, be complete and not left in doubt. A mandatory requirement by definition, has to be complied with in toto, in its full letter and spirit, and not as a halfway measure or in a patchy, perfunctory manner or deficient manner; it is evident from the facts and circumstances stated above and as noted in the impugned order that the accused did not have the opportunity of a translator or an interpreter at a stage when he was accosted and the search was conducted and scope of his legal rights were attempted to be explained to him under the framework of Section 50 of the NDPS Act. The so called alleged refusal by the accused to get a search conducted before a Gazetted Officer or a Magistrate would therefore, in the considered opinion of this Court, be vitiated on account of his part understanding/ misunderstanding/ mis-interpretation or even miscommunication of the questions put to him and/ or his response.

*13. The reliance by the State on this Court’s decision in **Innocent Uzoma v. State** (supra) and on “if such person so requires” would not be applicable since that is predicated on the person himself/herself being able to understand the question, the procedure and appreciate the consequences of his / her legal rights. In this case, it is apparent that the accused was not in a position to understand the importance of what was being communicated and its impact on his life. Therefore, this Court finds no infirmity in the impugned order.”*

² CRL.L.P. NO. 241 of 2020 decided on 22.12.2022

7. The aforesaid finding squarely applies to the present facts before me. *Prima facie* on reading the Memorandum Panchanama which is appended at page No.80 which is a continuing cause of action within a period of 3 hours from arrest of the seven accused it is prima facie seen that the prosecution has not followed the mandatory requirement of Section 50 insofar as the Accused Nos. 1 and 5 are concerned. If that provision is transgressed and not followed it would vitiate the action of the prosecution. In that view of the matter, Applicant who is Accused No.6, whose name is disclosed by Accused No.4 in the chain of arrests beginning from Accused No.1 deserves to be enlarged on bail.

8. Bail Application of Applicant is allowed 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. 1,00,000/- 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 am to 12:00 pm for 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 leave the State of Maharashtra without prior permission of the Trial Court;
- (v)** Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi)** 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;
- (vii)** Any infraction of the above conditions shall entail cancellation of this order.

9. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]