

Ajay

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

CRIMINAL BAIL APPLICATION NO. 564 OF 2025

Azim Akbar Ansari

.. Applicant

Versus

The State of Maharashtra

.. Respondent

-
- Ms. Ashwini Achari a/w. Mr. Anish Pareira, Mr. Devashish Dhanjode i./by Mr. Taraq Sayed for Applicant.
 - Ms. Megha S. Bajoria, APP for Respondent – State.
 - Mr. Akhtar Shaikh, PSI Nallasopara Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025.

P.C.:

1. Heard Ms. Achari, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. This is an Application under Section 483 of the Bharatiya Nagararik Suraksha Sanhita seeking Regular Bail in connection with C.R. No.48 of 2024 registered with Nallasopara Police Station for offences under Sections 8(c), 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). There are two Accused in the crime and Applicant before me is indicted as Accused No.1. He is incarcerated since 03.02.2024 i.e. 1 year 2 months and 5 days.

3. Briefly stated on 02.02.2024 at about 23:15 hours while on patrolling duty the prosecuting agency encountered the Applicant selling something (which they suspected to be drugs) from his bag to a person and hence accosted the Applicant however since he did not co-operate with them, they took him to the police station and made arrangements for conducting seizure / recovery panchnama. Applicant – Accused was served with the appraisal letter under Section 50 of the NDPS Act and after following the due procedure envisaged under the NDPS Act, 74 grams of alleged contraband Mephedrone (MD) was recovered from Applicant. On 03.02.2024 at 05:25 hours C.R. No.48 of 2024 was registered against Applicant and he was taken into custody.

4. Principal defence adopted by Ms. Acharii, learned Advocate for Applicant is that there is complete transgression of procedure laid down under Section 50 of the NDPS Act which vitiates the prosecution case at the threshold. She has drawn my attention to the appraisal letter under Section 50 at page No.39 of the Bail Application and the first line of the said letter which states that the police officer serving the said letter is himself a gazetted officer, after which the Applicant is apprised of his statutory right under Section 50 of the NDPS Act.

4.1. She would submit that the intention of apprising the Applicant under Section 50 of NDPS Act is to make an endeavour that his search that would be conducted is impartial and independent and

the same gets vitiated when the officer of the raiding team himself informs the suspect i.e. Applicant that he himself is a gazetted officer. Hence he cannot be called as an independent officer which is the crux of Section 50. She would argue that the very essence of procedural safeguard under Section 50 is transgressed when owing to aforesaid act of the prosecution, the suspect is induced to believe that the raiding officer himself is a gazetted officer. In support of her submissions, she has referred to and relied upon the following decisions of the Supreme Court and this Court:-

- (i) *State of NCT of Delhi Vs. Mohd. Jabir*¹;
- (ii) *Arif Khan @ Agha Khan Vs. State of Uttarakhand*²;
- (iii) *Gurnam Singh @ Gagan Vs. State of Punjab*³;
- (iv) *Moin Khan Afzal Khan Pathan Vs. State of Maharashtra*⁴;
- (v) *Salma Suleman Shaikh Vs. State of Maharashtra*⁵;
- (vi) *Nafor Igwe Chima Vs. The State of Maharashtra*⁶;
- (vii) *Afaque Asif Sayyed Vs. State of Maharashtra*⁷;
- (viii) *Mohammad Murad Khan @ Chotu Vs. The State of Maharashtra*⁸;
- (ix) *Mohammed Ishad Suleman Shaikh Vs. The State of Maharashtra*⁹;
- (x) *Riyaz Iqbal Tandel Vs. Union of India and Anr.*¹⁰;

1 Criminal Appeal No.4931 of 2024 decided on 02.12.2024 (SC)
2 2018 (2) Bom. C.R. (Cri.)
3 SLP (Cri.) No. 4590 of 2015 decided on 18.09.2015
4 Bail Application No.4051 of 2023 decided on 23.08.2024 (Bombay HC)
5 2018 SCC OnLine 13261
6 Bail Application No.541 of 2019 decided on 23.09.2019 (Bombay HC)
7 Bail Application No.1145 of 2015 decided on 22.12.2015 (Bombay HC)
8 Bail Application No.60 of 2024 decided on 09.01.2024 (Bombay HC)
9 Bail Application No.4535 of 2024 decided on 10.02.2025 (Bombay HC)
10 Bail Application No.2647 of 2022 decided on 11.08.2023 (Bombay HC)

(xi) *Shahid Aktharhusain Shaikh Vs. State of Maharashtra*¹¹
and

(xii) *Krishna Raju Koli Vs. State of Maharashtra*¹²

4.2. She would urge the Court to consider the above decisions in order to grant bail to the Applicant herein owing non-compliance of provisions of Section 50 of the NDPS Act. She would submit that Accused No.2 in the present crime has been granted bail by this Court. Hence she would urge for grant of bail to the Applicant.

5. Ms. Bajoria, learned APP for State has vehemently opposed the bail application and would submit that there is no non-compliance of Section 50 of NDPS Act as sought to be argued by Applicant. She would submit that Applicant was explicitly informed about his right to be searched in presence of a gazetted officer or magistrate and the first line of the notice which states that the police officer himself is a gazetted officer is only an additional information and no adverse inference can be drawn from the presence of the said line in the appraisal letter. She would submit that the same would not amount to non-compliance of Section 50 of NDPS Act. She would submit that in any event as recovery of contraband is from the bag of the Applicant, provisions of Section 50 would not be applicable.

¹¹ Bail Application No.499 of 2024 decided on 27.08.2024 (Bombay HC)

¹² Bail Application No.3133 of 2022 decided on 23.02.2023 (Bombay HC)

5.1. She would submit that the contraband seized from the Accused is commercial quantity and hence rigours of Section 37 would be applicable to his case. She would submit that drug trafficking not only eats into the vitals of the economy of a country but the illicit money generated by drug trafficking is often used for illicit activities and in the present case Applicant being a drug peddler, his chances of engaging in a similar crime if released on bail cannot be ruled out as the Applicant already has 2 antecedents to his discredit.

5.2. In support of her submissions, Ms. Bajoria has referred to and relied upon the following decisions of the Supreme Court as well as this Court:-

- (i) *State of Himachal Pradesh Vs. Pawan Kumar*¹³;
- (ii) *State of Himachal Pradesh Vs. Sunil Kumar*¹⁴;
- (iii) *State of Punjab Vs. Baljinder Singh and Anr.*¹⁵;
- (iv) *Ishwar Buddha Vs. State of Goa*¹⁶;
- (v) *Dayalu Kashyap Vs. the State of Chhattisgarh*¹⁷ and
- (vi) *Ranjan Kumar Chadha Vs. State of Himachal Pradesh*¹⁸

5.3. In view of her above submissions, she would urge the Court to reject the Bail Application.

¹³ Criminal Appeal No.222 of 1997 decided on 08.04.2005

¹⁴ Criminal Appeal No.1101 of 2005

¹⁵ (2019) 10 SCC 473

¹⁶ AIR Online 2019 Bom 1517

¹⁷ [2022] 1 S.C.R. 1020

¹⁸ 2023 SCC OnLine SC 1262

6. With the able assistance of the learned Advocates, I have perused the record of the case as well as the decisions tendered by both sides.

7. In the present case, the moot point which falls for consideration of the Court is whether the action on part of the police officer who was a part of the raiding team introducing himself as a gazetted officer to the Applicant - Accused at the inception while serving the Section 50 appraisal letter is permissible in law or otherwise? Learned APP has not given any plausible justification or explanation for such arbitrary action on part of the prosecution raiding team.

8. The importance of presence of an independent officer or magistrate for conducting search of Applicant - Accused in NDPS matters is iterated in a plethora of judgements of the Supreme Court as well as this Court. There is no explanation or justification given by the prosecution on this aspect and prosecution has attempted to argue that Section 50 would not be applicable as the search was conducted of the bag and not the person. However, it is settled law that when search is conducted out of a person alongwith his bag, provisions of Section 50 of the NDPS Act would be applicable as it is search of an article which is inextricably linked to the person i.e. Accused in the present case. Section 50 of the NDPS Act is a procedural safeguard inserted in the

legislation to check misuse of power at the instance of the prosecuting agencies and to avoid false indictment of innocent persons. In the present case the appraisal letter was given. If what the learned Prosecutor has argued is to be countenanced, then there was no reason for the prosecution to give the appraisal letter to Applicant. The appraisal letter issued under Section 50 of the NDPS Act is thus contrary to the settled law as the possibility of misleading the accused cannot be ruled out in such a scenario.

9. Moreover the panchanama at page No.37 of the Application in paragraph No.3 mentions that Applicant - Accused was apprised of his right under Section 50 of the NDPS Act verbally in Hindi language as well as appraisal letter was given in Hindi language and that he made an endorsement on the said letter in Marathi language and signed the same which further creates a suspicion about the prosecution case. Procedure laid down under Section 50 of the Act needs to be followed scrupulously and the said procedure cannot be digressed at the whims of the prosecution officers conducting the raid. In view of the aforesaid observations, there is *prima facie* clear transgression of the provisions of Section 50 of the NDPS Act as also the guidelines laid down by the Supreme Court in the case of ***Ranjan Kumar Chadha*** (*supra*) which are squarely applicable. The first line stated in the appraisal letter amounts to inducing a *prima facie* threat on the suspect about to be searched and it was not necessary. It cannot

be treated as an additional information as it is inextricably linked with the statutory provisions envisaged under Section 50 of the NDPS Act.

10. Hence, the Applicant has made out a case for grant of bail. Apprehension expressed by Ms. Bajoria regarding re-offending by Applicant can be taken care of by imposing stringent conditions. Application is allowed on the 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) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court and deposit his passport, if any, with the concerned Investigating Officer;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

11. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

12. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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