

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.753 OF 2025

Kehinde Bolaji Bello	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Ms. Ashwini Acharii a/w. Mr. Anish Pereira, Advocates i/by Taraq Sayed for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025

P.C.:

1. Heard Ms. Acharii, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent.

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.32 of 2024 registered with Tulinj Police Station for offences punishable under Sections 8(c) and 22(c) of the he Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') read with Section 14(6) of the Foreigners Rules, 1992.

3. On 21.02.2025, this Court passed the following order:-

"1. Heard Mr. Pereira, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent.

*2. Applicant before me is indicted for offences punishable under provisions of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') for possession of 56 grams of Mephedrone and 7.50 grams of Cocaine. Principal defence of Applicant is non-*

compliance of provisions of Section 50 of the NDPS Act from the notice issued to Applicant appended at page No.61 of the Application.

3. *It is prima facie, seen that notice is worded in a verbose format but what is seen from said format is that there is no signature and name of the panchas on the same.*

4. *Prosecution shall take appropriate instructions on the aforementioned submissions made by learned Advocate and apprise the Court on the next adjourned date.*

5. *Stand over to 04th April, 2025 at 02:30 p.m.”*

4. Matter was heard on several occasions thereafter.

5. Mr. Karmakar, learned APP in response to the aforesaid order would submit that if the appraisal letter appended at page No.61 of the Application is seen the information as required under the provisions of Section 50 of the NDPS Act *prima facie* and apparently seems to have been conveyed to Applicant and Applicant has signed the said letter.

6. He would submit that there is adequate compliance of provisions of Section 50 of NDPS Act and therefore submission made by Ms. Acharii should not be countenanced at this stage and left to trial. This Court has in a series of similar and identical matters considered the effect of Section 50 of the NDPS Act and effect of the appraisal letter given to Accused persons before carrying out his search, seizure and arrest.

7. The effect of Section 50 of the NDPS Act appraisal letter is highlighted by Supreme Court in the case of ***Ranjan Kumar Chadha Vs.***

*The State of Himachal Pradesh*¹ and more specifically in paragraph Nos.65 and 66 of the said decision wherein Supreme Court has laid down clear guidelines to be followed and effected by prosecution officers for the purpose of giving effect to appraisal letter envisaged under Section 50 of the NDPS Act. For reference and convenience, the said paragraph Nos.65 and 66 are delineated hereinunder:-

“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*

¹ 2023 SCC OnLine SC 1262

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)

8. *Prima facie* in the present case if letter at page No.61 which is

the appraisal letter is seen it shows that said letter does not bear the signature of the two witnesses which is *prima facie* the *sine qua non* of effecting search and seizure operation by the prosecution officer which has to be carried out in the presence of independent panchas. Further and most importantly the word “right” has not been apprised to Applicant neither stated in the appraisal letter.

9. In that view of the matter submission made by Mr. Karmakar that right of Applicant has been duly conveyed to him which is evident from the said letter is unacceptable and cannot be countenanced.

10. The right has to be conveyed to the accused persons as envisaged under Section 50 of the NDPS Act and not in any other manner at the whim and fancy of the Officer who is conveying the said right to the Accused since it is a statutory right of the Accused person to know as to why he is been searched and whether he can exercise it before the Magistrate or gazetted officer. *Prima facie*, the case of prosecution on the basis of Section 50 of the NDPS Act appraisal letter without bearing signatures of the panchas namely Manoj Sawant and Sunil Chandrakant Patil stands clearly vitiated on the face of record.

11. It is observed on record that seizure panchanama is dated 15.01.2024 as appended at page No.62 but notice of search is dated 16.01.2024 which is a *prima facie* misnomer on the face of record as the Section 50 appraisal letter precedes the seizure panchanama. If

the search and seizure was carried out at night, then the above document should bear the time also to eradicate any doubt. Having noticed the above dichotomy and discrepancy writ large on the face of record, Applicant in my opinion has made out a case for grant of bail as prosecution case *prima facie* stands vitiated

12. In view of the above *prima facie* observations, Applicant is directed to be released 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.20,000/- 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;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (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; and
- (ix) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in

the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*².

13. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

14. Bail Application No.753 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

2 Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.