

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 72 OF 2025
IN
CRIMINAL APPEAL NO. 1291 OF 2024**

Saif Husain Istiyak Husain Chaudhary ... Applicant

Versus

State of Maharashtra ... Respondent

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- Mr. Kiran Gogavale, Advocate for the Applicant/Appellant.
- Mr. C.D.Mali, APP for the State.
- Mr. Sachin Palve, API, Worli Police Station, Mumbai present.

CORAM : R. M. JOSHI, J.

RESERVED ON : 25th NOVEMBER, 2025.

PRONOUNCED ON : 1st DECEMBER, 2025.

P.C. :

1. This application is filed by the appellant for suspension of substantive sentence and enlargement on bail in connection with Judgment and Order dated 27.11.2024 passed in N.D.P.S. Special Case No. 815 of 2022 whereby the appellant is sentenced to suffer rigorous imprisonment for 10 years with fine.

2. Learned counsel for the appellant submits that during the trial the appellant was on bail and since the imposition of the sentence, he is in jail. It is his submission that the evidence on record indicates about non compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act (for short “NDPS Act”) read with Section 41 and Section 42

thereof. In this regard, attention of this Court has been drawn to the evidence on record which indicates that before carrying out personal search, the appellant /accused was not apprised of his right to be produced before the Gazetted officer or Judicial Magistrate by relying upon the following Judgments :

(i) Mohinder Kumar Vs. The State, Panaji, Goa (Cri.Appeal No. 399 of 1992); (ii) Shiv Kumar Ashok Mishra Vs. Special Judge of N.D.P.S. Court, Mapusa-goia State. (Criminal Appeal No. 22 of 1994); (iii) Arif Khan @ Agha Khan Vs. State of Uttarakhand (Criminal Appeal No. 273 of 2007) ; (iv) Union of India Vs. Leen Martin (Criminal Appeal No. 2150 of 2011); (v) Leen Martin Irish National Vs. Union of India, Air Intelligence Unit and Ors. (Criminal Appeal No. 379 of 2007); (vi) Pyare Mohammad s/o. Mohammad Isaq Vs. State of Maharashtra (Criminal Appeal No. 310 of 2002); (vii) Mangilal Vs. State of Madhya Pradesh (Criminal Appeal No. 1651 of 2023); (viii) Union of India Vs. Jarooparam (Criminal Appeal No. 741-742 of 2011) ; (ix) Vijaysinh Chandubha Jadeja Vs. State of Gujarat (Criminal Appeal No. 943 of 2005 with Nos. 974 of 2003 and 1809 of 2009); (x) Mohinder Kumar Vs. The State, Panaji, Goa; (xi) Shiv Kumar Ashok Mishra Vs. Special Judge of N.D.P.S.Court, Mapusa-goia State.

It is further argued that the case of the prosecution has not been supported by panch witnesses so also the destruction certificate has not been produced before the Trial Court. To support this submission. Reference is made to the following judgments :

(i) Union of India Vs. Leen Martin

(ii) Leen Martin Irish National Vs. Union of India, Air Intelligence Unit and Ors.

3. Learned Special P.P. opposed the application by submitting that the applicant has been convicted and sentenced to suffer 10 years imprisonment and that he has not even undergone half of the sentence. In response to the submissions of the learned counsel for the appellant with regard to the non compliance of the provisions of Section 50 and Section 42 of the Act, reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of *Ranjan Kumar Chadha Vs. State of Himachal Pradesh in Criminal Appeal Nos. 2239-2240-2011*, to argue that in view of the law settled by the Hon'ble Supreme Court the compliance of Section 50 would be required only in the case of personal search of the accused i.e. search of his body and / or apparels on the body. It is argued that since as per the evidence on record, the contraband articles are seized from the polythene bag held by the appellant / accused, there is no substance in the argument of non compliance of Section 50 read with Section 42 of the Act.

Reference is also made to the Judgment of Hon'ble Supreme Court in the case of *Narcotic Vs. Kasif in [Criminal Appeal No. 5544 of 2024 (@Special Leave Petition (Cri.) No. 12120 of 2024)]*, to argue that any irregularity committed in disposal of contraband the articles may not affect the trial being irregularity and not illegality.

4. At this stage, this Court is required only to prima facie consider as to whether the appellant would have any chance of success during the hearing of the appeal. The only issue sought to be argued before this Court is that there is non compliance of Section 50 read with 42 of the Act. It is submitted that it was the right of the appellant / accused of being apprised of the fact that he has right to seek his personal search before the Gazetted Officer or before the Judicial Magistrate. Here in this case, there is no evidence on record to indicate so. However, the prima facie consideration of evidence indicates that the seizure of the contraband articles has not been done from the person of the accused but the same has been done from, the polythene bag held by him. Hence, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in the case of *Ranjan Kumar Chadha (Supra)* as well as in the case of *State of Kerla Vs. Prabhu in Criminal Appeal No. 3434 of 2024*.

5. The perusal of the said Judgments clearly indicate that according to the Hon'ble Supreme Court the compliance of Section 50 would come in

play only in the case of personal search of the accused i.e. appearance on his person and would not apply to the bag held by him in his hand. Thus, there is no prima facie substance in contention of appellant in that regard.

6. Apart from this, the Judgment in the case of *Narcotics Control Bureau (supra)* indicates that unless there is procedural legality, the same would not vitiate the trial. Hence, this Court can not accept that such procedural irregularity would help the accused to succeed in Appeal.

7. Having regard to these facts, this Court finds it difficult to accept the contention of the appellant that there would have reasonable chance of success in the appeal. The appellant has not been undergone half of the sentence. Owing to these reasons, no case is made out for appellant for enlargement on bail, hence dismissed.

8. Appeal stands expedited.

9. The observations made above are limited for decision of this application and could not come in way of either side during hearing of appeal finally.

(R. M. JOSHI, J.)