



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.90 OF 2025
(Vimal Kumar Siddhu Prasad Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.M. Awchar, Advocate for the applicant.
Mrs. M.A. Barabde, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 4, 2025.

By this application, the applicant is seeking bail as he came to be arrested on 21/03/2024 in connection with Crime No.187/2024 registered with police station Tahsil, Nagpur, District Nagpur for the offence punishable under Sections 22(c) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "NDPS Act" for short.)

2. The accusation against the present applicant is on the basis of report lodged by Police Constable Sanjay Sahu on an allegation that when he was present in the police station, his superior officer called him and other employees and informed that he has received the secret information that some persons are transporting the contraband articles by travelling on two wheeler. He along with the other raiding party members immediately intercepted the present applicant and the other co-accused on visiting Dadapur Railway Line, Bankheda,

Nagpur. The applicant was found in a suspicious condition. On his personal search the Mephedrone (M.D.) drugs powder was found in his possession of 72 grams worth of Rs.7,20,000/-. After following the due process, he was taken into custody. The contraband articles was seized and FIR is lodged against him. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that there is no compliance of Section 50 of the NDPS Act. He was not informed as to his right to the right regarding the search before the Gazetted Officer. He submitted that there was no independent witness when his personal search was carried out. Thus, in the light of non-observance of the mandatory condition, the bar under Section 37 will not attract and the applicant deserves to be released on bail.

4. Learned APP strongly opposed the application and invited my attention towards the communication which is made to the present applicant and submitted that the present applicant has denied search himself in the presence of the Gazetted Officers. Thus, there is a compliance in view of Section 50 of the NDPS Act, and therefore, bar under Section 37 will attract. In view of that, the application deserves to be rejected.

5. On perusal of the recitals of the FIR and the investigation papers, it reveals that after receipt of the information which was a secret information the informant and other raiding party members have proceeded and intercepted the present applicant at Dadapur Railway Line, Bankheda, Nagpur wherein the present applicant was intercepted and from his possession the Mephedrone of 72 grams was seized. The recitals of the FIR itself shows that by issuing the notice under Section 50(1), the search was taken and the applicant has denied to search himself before the Gazetted officers. Thus he has not shown any willingness to exercise his right as to the search before the Gazetted officers. The spot panchnama as well as seizure panchnama was also drawn from which it reveals that from the possession of the present applicant 72 grams Mephedrone was seized which is a commercial quantity. The applicant was found proceeding on two wheeler vehicle when he was intercepted by the raiding party members. Thus, as far as the conscious possession is concerned at this stage, there is sufficient material to show that from the conscious possession of the present applicant, the contraband articles was seized.

6. Section 50 of the NDPS Act mandates the empowered officer to inform the concerned suspect about the existence of his right that if he so requires, he shall be searched before a Gazetted Officer or Magistrate. The intention of the legislature in incorporating this provision

is to ensure that the individual is aware of his right and to prevail potential misuse of power by law enforcement authorities. This safeguard aims to instill a sense of security and fairness in the search procedure, ensuring that the concerned suspect can exercise his right to be searched in a transparent manner.

7. Learned Counsel for the applicant placed reliance on the decision of the Delhi High Court in ***Bantu vs State Govt Of Nct Of Delhi in Bail Application No.2287/2022*** and also placed reliance on ***Abdul Kadar Shaikh vs Union Of India [2024 DGLS (Bom.)1698]***.

8. The Constitutional Bench of the Hon'ble Apex Court in the case of ***Vijaysinh Chandubha Jadeja vs State Of Gujarat [(2011) 1 SCC 609]*** while explaining the scope of Section 50 and taking into account the observation enumerated in another Constitution Bench judgment in the case of ***State of Punjab Vs. Baldev Singh [(1999) 6 SCC 172]*** held as under:

“Although the Constitution Bench in Baldev Singh’s case did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to “inform” the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched

before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

"In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it

would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.”

9. Thus, the Hon’ble Apex Court after examining the provisions of Section 50 of the NDPS Act held that an empowered officer must inform the person being search of their right to be taken before a Gazetted Officer or a Magistrate for the search. This information need not be in writing. Failure to inform the person of his right causes prejudice to an accused. It was further held that the Court must determine compliance with Section 50 of the NDPS Act based on trial evidence and the prosecution must be allowed to establish compliance during the trial. The provisions of Section 50 of the NDPS Act are not explicitly stated as a mandatory or directory. But failure to inform a person of their right may render the recovery of the

contraband suspect, thus affecting the validity of the conviction and sentence.

10. Thus, provisions of Section 50 of the NDPS Act have to be strictly complied with. The same, however, does not mean that each and every word mentioned in the provision has to be repeated verbatim in the notice. As long as the intention of the notice is clear and the language used substantially complies with the intention of the provision, the same would be strict compliance with the provision. Section 50 of the NDPS Act provides for the responsibility of the officer to search the suspect before the 'nearest' magistrate or gazette officer. The duty is cast upon the officer to take the person if he so requires to the nearest Gazetted Officer or a Magistrate. The right of the suspect, however, is to be informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate if he so desires. The officer undoubtedly has to take him to the nearest Gazetted Officer or a Magistrate however, not informing the suspect that he would be taken to the 'nearest' Magistrate for the purpose of search will not amount to non-compliance with Section 50 of the NDPS Act. Thus, the essence of Section 50 of the NDPS Act is to 'inform' the concerned suspect of his right. The omission of specific words thereof, does not lead to non-compliance if no prejudice is caused. The substantial compliance with procedural safeguards is adequate if the rights of the accused are not prejudiced. The intention of

legislation is that the suspect is made aware of his rights rather than rigid adherence to the statutory text. The substance of the law should prevail over its form, and technical aspects that do not compromise the rights of the suspect cannot be a ground for the grant of bail at this stage, the same is matter of trial.

11. In the light of the above observation if the facts of the present case are taken into consideration, admittedly, there is a compliance by informing the applicant that he is having a right to get himself search before the Gazetted Officer. Thus, in view of the decision of the Hon'ble Apex Court, the Constitutional Bench as far as the right of the "inform" is complied with. As observed by the Hon'ble Apex Court that whether there was a strict compliance or not that is to be seen at the stage of the trial and the substance of the law should prevail over its form, and technical aspects that do not compromise the rights of the suspect cannot be a ground for the grant of bail at this stage. In view of that, the application deserves to be rejected.

12. The application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)