HEMANT CHANDERSEN SHIV

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1888 OF 2026

Santosh Laxman Singh ...Applicant

V/s.

The State of Maharashtra & Anr. ...Respondents

Mr. Advait Tamhankar, through VC with Shivraj Kuchge i/b Anil Wagh for the Applicant.
Ms. Veera Shinde, APP for Respondent No.1-State.

CORAM: SHYAM C. CHANDAK, J.
DATED : 5th OCTOBER, 2026

P.C. :-

1. Heard learned Counsel for the parties. Perused the record.

2. Applicant seeks his release on bail in NDPS Special Case No.58 of 2025, in connection with Cr. No.163 of 2025, registered with Palghar police station, Palghar for the offence punishable under Sections 8(c), 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") on the report dated 6th June 2025, filed by the first informant.

3. The prosecution case is that, on 5th June 2025, at about 23.00 hours, when the informant along with Mr.Anil Vhatkar, API, Mr. Rathod, PSI and other police personnel were patrolling within area of Manor police station, Mr. Rathod received a secret information that two persons would be arriving at Eastern side area of Palghar railway station to sell the contraband substance. In turn, Mr.Vhatkar, conveyed that information to local crime branch, NCB, Palghar, who directed for taking necessary action. Therefore, the police called two panchas and, at about 01.30 hours, they came to at Ambedkar Maidan, near Gandhi Nagar slum and laid a trap

there. At about 02.25 hours, the applicant and Harshad Thorat (A2) came there. Their appearance matched with the secret information, therefore, they were accosted. Then, the notice under Section 50 of the NDPS Act was served upon both the accused, which read thus :-

एन.डी.पी.एस. अधिनियम कलम ५० अन्वये समजपुत्र

प्रति,

१) संतोष लक्ष्मण सिंह वय ४३ वर्षे सध्या राहणार शांती चाळ चिराग स्कुल जवळ भैयापाडा चोईसर मुळ राहणारं ग्राम सुधार पो.सालाबाद तहसिल माधवगड जिल्हा जालोन राज्य उत्तरप्रदेश

२) हर्षद व्दारकानाथ थोरात वय ४२ वर्षे राहणार साई पार्क बिल्डींग नंबर ३ सी विंग रुम नं.४ तारापुर रोड कुरगांव ता.जि. पालघर

आपणास याव्दारे कळविण्यात येते की, मी सहा. पोलीस निरीक्षक, अनिलं व्हटकर नेमणुक स्थानिक गुन्हे शाखा पालघर, आम्ही स्वतः राजपत्रित अधिकारी असुन आज दि.०६/०६/२०२५ रोजी ०२.२५ वा. पासून गांधीनगर झोपडपटटी परीसरात अंमली पदार्थ विक्री करीत घेवून जात असताना आंबेडकरनगर मैदान जवळ मिळून आले आहात.

तरी आपली व आपली अंगझडती पंचाचे उपस्थीतीत घ्यावयाची आहे.. सदरची झड़ती ही मी स्वतः किंव आपली हरकत असल्यास इतर कोणी राजपत्रित अधिकारी अथवा दंडाधिकारी यांचे समक्ष घेण्यात येईल याकरीत आपली काही हरकत आहे अगर कसे ? याबाबत आपली लेखी संमती देण्यात यावी.

०६/०६/२०२५
sd/-
(अनिल व्हटकर)
सहा. पोलीस निरीक्षक
स्थानिक गुन्हे शाखा, पालघर

आरोपी सही :- १) सही (Eng.) २) सही (Eng.)

१) श्री. प्रभाकर विष्णु लडे, वय ४३ वर्षे, धंदा शेती राहणार सही (Mar.)
मु.पो.देवखोप ता.जि.पालघर मोबाईल क्रमांक ***** *****

२) श्री. मोहन विष्णु पाटील वय ६२, वर्षे, धंदा शेती राहणार सही (Eng.)
मु.पो.उमरोली ता.जि.पालघर मोबाईल क्रमांक ***** *****

4. In response, both the accused orally informed that they do not require the same and singed on the notice to that effect. Therefore, Mr.Vhatkar conducted the personal search of the applicant. 15 small pouches were found in the bag hanging around the neck of the applicant. Said pouches were containing some powdery substance. On enquiry, the applicant disclose that it was 'Cocaine'. A sample from one pouch was tested with Drug Detection Field Kit, which gave the positive result for 'cocaine'. Nothing incriminating was found on the person of A2. The said contraband was seized under a panchnama was recorded. Accordingly, the aforesaid crime came to be registered. The applicant and A2 were arrested. On completion of the investigation, charge-sheet came to be filed. The trial Court declined to release the applicant on bail. Hence, this application.

5. Mr.Tamhankar, learned Counsel for the applicant submitted that although the contraband was found in the bag as stated above, compliance with Section 50 of NDPS Act was necessary, as the personal search was also undertaken in this case before searching the said bag. Additionally, he submitted that the wife of the applicant is suffering from Tuberculosis and Renal problem. Presently, she is on dialysis which fact is substantiated by the relevant medical papers (copies). Therefore, has urged to release the applicant on bail.

6. In reply, Ms. Shinde, learned APP submitted that the commercial quantity of the contraband substance was found in the bag which was hanging around the neck of the applicant. Therefore, the non compliance of Section 50 of the NDPS Act is insignificant. The applicant has failed to explain the contraband. Therefore, rigors of Section 37 of the NDPS Act are applicable in this case.

Consequently, the medical condition of the wife of applicant will not come to his rescue. Therefore, bail be refused.

7. I have considered the submissions. As alleged, the contraband was found in a bag of the applicant hanging around his neck. However, since the personal search of the applicant preceded the search of the bag, the law mandates that in such circumstances Section 50 of NDPS Act is properly complied with. This conclusion is supported with the decision in **Sk. Raju @ Abdul Haque @ Jagga v. The State of West Bengal**, reported in **(2018) 9 SCC 708**. Therein, the appellant was apprehended in a public place pursuant to a secret information. He was served with the notice of Section 50 and informed about his right. On the search of the appellant by PW2 in the presence of the gazetted officer, a biscuit colour jute bag which the appellant was carrying in his right hand was recovered from the appellant, and Rs. 2,400/- cash in the denomination of 24 notes of Rs. 100/- each was found in the left pocket of the appellant's trouser. When the bag was opened, a black polythene cover containing nineteen rectangular broken sheets of a blackish / deep brown colour weighing 1.5 kilograms was recovered. The sheets were tested and were found to be charas. Therefore, the Hon'ble Supreme Court held that, since the search of the person of the appellant was also involved, Section 50 would be attracted in that case.

8. Coming back to the case in hand. The notice of Section 50 indicate that it was in the joint names of the applicant and A2. An accused person who is about to be subjected to a personal search must be informed only of their right to be searched in the presence of a Gazetted Officer or a Magistrate. However, in this case, Mr.

Vhatkar also gave his own option, he being the Gazetted Officer, which amounted to third option.

The Hon'ble Supreme Court in **State of Rajasthan v. Parmanand and another**, reported in **(2014) 5 SCC 345**, held that the idea behind taking an accused to the nearest Magistrate or the nearest gazetted offficer, if he so requires, is to give him a chance of being searched in presence of an independent officer. Therefore, it is improper for a police officer to tell the accused that a third alternative is also available and, that they could be searched before J.S.Negi, the Superintendent who was part of raiding party. That, J.S.Negi cannot be called an independent officer. The Apex Court also took the view that a joint communication of the right available under Section 50 of the NDPS Act to the accused would frustrate the very purport of Section 50.

9. As held in the case of **Ranjan Kumar Chadha v. State of H.P.**, reported in **2023 SCC OnLine SC 1262**, in paragraph 66 (ii), "Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the 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."

In the case in hand, the notice of Section 50 bears the signature of the applicant and A2, but, it does not contain their response thereto. Even though the panchanama bears the signature of the applicant and A2, it is towards an acknowledgment about receipt of its copy. Therefore, implicitly, it appears that since the applicant had declined his right of being searched before a Gazetted

Officer or Magistrate, in the panchanama, the empowered/Gazetted Officer Mr. Vhatkar recorded that the police may take the personal search of the applicant. However, the said decline is not clearly recorded as enunciated in the case of **Ranjan Kumar Chadha (Supra)**. As evident from record, since recording of the pre-trap panchanama Mr. Vhatkar was present in the raiding party.

Therefore, I have no hesitation to accept that Section 50 (1) of NDPS Act was not properly complied in this case and it violated the right of the applicant stated therein which, prima facie, renders the recovery of the illicit article suspect .

10. Additionally, I have considered that the Respondent-police have verified the medical papers of the wife of the applicant and reported that she is undergoing necessary medical treatment. Mr. Tamhankar submit that her both kidneys are not functioning normally, therefore, she is in need of the support of the applicant who is a sole earning member of the family. The contraband substance found in the bag of the applicant is marginally above intermediate quantity, i.e., by 20 gms. The applicant is in jail for last more than 15 months. Till the date, no charge is framed in the case. Therefore, the applicant's right to liberty needs to be considered, accordingly.

11. The upshot of the above discussion is that, the applicant may be released on bail. Thus, I am inclined to allow the application. Hence, following Order :-

(i) The Applicant – Santosh Laxman Singh be released on bail in NDPS Special Case No.58 of 2025, in connection with Cr. No.163/2025, registered with Palghar police station,

Palghar , on his executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicant shall mark his attendance at Palghar police station, Palghar on 1st day of each calender month between 11:00 a.m. to 2:00 p.m. till conclusion of the trial.

(iii) The applicant shall regularly attend the proceedings before the jurisdictional Court unless exempted by the said Court, for the reasons to be recorded in writing.

(iv) The applicant shall not tamper with the prosecution evidence and shall not directly or indirectly influence upon the prosecution witnesses to prevent them from deposing against him.

(v) On being released from jail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(vi) The applicant shall not indulge in identical activities for which he has been arraigned in this case.

(vii) It is clarified that any observation made in the present Order are for the purpose of deciding the present Bail Application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

12. At this stage, as requested by the learned Counsel Mr.Tamhankar, the applicant is granted three weeks time to furnish surety. Till then, the applicant be released on bail on his executing a

P.R. Bond in the sum of Rs.50,000/- and depositing a sum of Rs.50,000/- in lieu of furnishing the surety bond. On furnishing such surety/ies, the amount of Rs.50,000/- deposited by the applicant shall be returned.

13. Bail Application stands disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)