

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1104 OF 2024

Salim Urf S P Nizamuddin Shaikh

...Applicant

Versus

State Of Maharashtra

...Respondents

Mr. Rounak Naik a/w Lochan Chandka, for the Applicant.

Mr. Rishikesh M. Pethe, APP for the Respondent - State.

PSI – Ramdas Kolte, Bhoiwada Police Station, Bhiwandi, present.

CORAM: R. M. JOSHI, J.

DATED: 23rd MARCH, 2026.

PC:-

1. The Applicant seeks bail in connection with CR No.132 of 2023 dated 22nd June, 2023, registered with Bhoiwada Police Station, for offence punishable under Sections 8(c), 21(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Section 142 of the Maharashtra Police Act, 1951.

2. Learned counsel for the Applicant, submits that irrespective of the fact that the Applicant is said to have committed the crime while prohibited from entering particular area pursuant to externment order that does not become a ground for rejection of his bail application. It is his submission that in view of the settled position of law that non-compliance of Section 50 of the NDPS Act would lead to making the recoveries pursuant to the search

conducted as illegal. It is his submission that the said non-compliance goes to the root of the case and would affect the case of the prosecution even in the trial. He therefore seeks bail.

3. Learned APP opposed application on the ground that applicant committed offence in breach of externment order and on that count itself application be dismissed. He further sought to canvass the fact that there is compliance of Section 50 of the NDPS Act more particularly in view of the statement made by the Applicant on notice. “मेरी अंगझडती और घर की झडती लेने के लिए राजपत्रित अधिकारी अगर दंडाधिकारी इनकी जरूरत नहीं”. This according to him indicates about appraisal of the right of the Applicant to get search in presence of Gazetted Officer or Magistrate. It is also argued that there are three antecedents of similar nature against the Applicant.

4. Needless to reiterate that it is the settled position of law that Section 50 is mandatory in nature. In a number of judgments of the Supreme Court it is held that substantial compliance of the said provisions is not sufficient to meet the requirement of Section 50 and such compliance must be absolute. In case there is non-compliance of Section 50 of the NDPS Act, the entire seizure itself becomes negatory and would affect adversely the case of prosecution. This non-compliance cannot be ignored even at the stage of bail since it goes to the root of the matter.

5. In the backdrop of the said position of law, a perusal of the notice under Section 50 of the NDPS Act given to the Applicant does not indicate the right of the Applicant being communicated to him of seeking search in presence of a Gazetted

Officer or Magistrate. The panchanama of seizure also does not show communication of such right to the applicant before conducting the search.

6. The text of the said notice on the face of it does not satisfy the requirement of Section 50 of the NDPS Act. In absence of any right being communicated to the Applicant under Section 50 of the NDPS Act, the endorsement made by the Applicant becomes inconsequential. The compliance of Section 50 being mandatory in nature and *prima facie* the same not been complied in the instant case. Thus more is reason to believe that applicant may have not committed the crime and is not likely to repeat the same.

7. In view of the aforestated facts, only for the reason that the Applicant has criminal antecedents and the offence was committed while he was prohibited from entering particular area, the application for bail cannot be rejected. Hence, the following order is passed.

ORDER

- i) The Bail Application is allowed.
- ii) In connection with C.R. No.132 of 2023 registered with the Bhoiwada Police Station, the Applicant be enlarged on bail on furnishing PR Bond of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- iii) The Applicant shall attend the Police Station concerned once a month i.e. on First Monday of each month till conclusion of the trial.

8. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(R. M. JOSHI, J.)