

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3803 OF 2024

Shahnawaj @ Shahnawaz @ Shahnawaz ...Applicant
Abrar Khan

Versus

The State Of Maharashtra ...Respondent

Ms. Puja Yadav i/b Shreerat Kamath for the Applicant in
BA/3803/2024.

Ms. Veera Shinde APP, for the Respondent-State.

CORAM: R. M. JOSHI, J.

DATED: 23rd MARCH, 2026

PC:-

1. By way of Criminal Bail Application bearing no. 3803 of 2024, applicant seeks regular bail in connection with CR No.17 of 2023 registered with Anti Narcotic Cell, CB, CID, Ghatkopar Mumbai for the offence punishable under Sections 8(c), r/w, 22(b), 22(c) 29 of the NDPS Act 1985.

2. Learned Counsel for the applicant submits that the *prima-facie* perusal of the chargesheet indicates that the applicant has

been falsely implicated in this crime. To support this submission, reference is made to the First Information Report, wherein names of the applicant and co-accused are referred as panch witnesses. She further contends that this is corrected only after seven days of registration of the report. Apart from this, it is her contention that this is a case wherein the personal search of the applicant was also taken by the concerned police officer, however, the applicant has not been appraised of his right to seek search in presence of gazetted officer or a Magistrate. This according to her, contravenes provisions of Section 50 of the NDPS Act. She further drew attention of this Court to the chargesheet indicating that the alleged recovery at the first instance along with co-accused is not reflected in the chargesheet i.e., from muddemal registered place on record. It is her contention that since the personal search of the applicant was also taken, the irrespective of the fact as to whether there is any recovery of contraband from the personal search, the compliance of Section 50 of the Act becomes necessary.

3. Learned APP opposed the application firstly by contending that applicant has criminal history behind him of commission of Similarly, crime it is further argued by relying upon the judgment of the Hon'ble Supreme Court in a case of ***State of Punjab Vs. Baljinder Singh and Anr.*** SLP (Crl.) No 5659/5660 of 2019 that even in case of personal search of Vehicle by Section 50 is not necessary. In this judgment it is held by Supreme Court that law laid down in case of Dilip Vs. State of MP is not correct. Apart from this it is argued that there is *prima-facie* sufficient material on

record to indicate the commercial quantity of contraband is at the instance of the applicant. Learned Counsel for applicant in response to the judgment in case of **Baljinder Singh (supra)** placed reliance on judgment in the case of ***Sanjeev & Anr. Vs. State of Himachal Pradesh*** passed in Criminal Appeal No. 870 of 2016 and made reference to para 9 thereof.

4. Insofar as the present case is concerned admittedly the personal search of the applicant was taken by the concerned officer and nothing was found from his personal search. It is thereafter as per case of the prosecution a commercial quantity of contraband was seized from the present applicant from his bag. In such case, compliance of Section 50 is mandatory. Perusal of the seizure panchanama indicates that though the co-accused had communicated of his right of being search only gazetted officer or a Magistrate, no such right was appraised to the applicant. Needless to say that any recovery pursuant to such the non-compliance of mandatory provision would be rendered illegal.

5. It would be relevant to take note of observation made by Hon'ble Supreme Court in case of ***Sanjeev (supra)*** which came to be passed by bench of equal strength of judgment in case of ***Baljinder Singh (supra)***. The observations made in para 9 of reads thus :

“9. We have checked the original record to satisfy ourselves Exhibits PW8/B, PW8/C, PW8/D and

PW8/E, which are arrest memos, do not reflect that any option or choice was given to the accused before their personal search was undertaken. It is true that the personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording option, was one of the reasons which weighed with the Trial Court in disbelieving the case of the prosecution”.

Thus, compliance of Section 50 is held to be necessary even if nothing is recovered from personal search of the accused.

6. Apart from this, perusal of the chargesheet indicates that investigation has been done in most possible casual manner. The F.I.R. describes accused as panch witness whereas inspite of seizure of contraband at the instance of the applicant. At the first instance, there is no record indicating the said seized contraband being kept in muddemal.

7. In aforestated facts this Court has reason to believe that applicant has not committed the crime. Merely because there are criminal antecedents against the applicant. Since, *prima-facie* this is found to be a possible case of false implication, application deserves to be allowed.

8. Hence the following Order.:

ORDER

- i) The application stands allowed.
- ii) Applicant is enlarged on bail in connection with CR No.17 of 2023 registered with Anti Narcotic Cell, CB, CID, Ghatkopar Mumbai for 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) Applicant to attend each hearing of the trial court on all scheduled dates except exempted by the court.
- iv) Considering the antecedent is directed to attend the concerned police station once in a month till conclusion of the trial.

(R. M. JOSHI, J.)