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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

CRIMINAL BAIL APPLICATION NO.4758 OF 2024

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Sherali Hafiz Khan
V/s.

...Applicant

The State of Maharashtra

...Respondents

- Mr.Dilip Mishra with Mr.Ajay Bhise and Mr.Tejas V. Dhotre i/b Tarsem Gabbi for the Applicant.
- Mrs.Shilpa Gajare Dhumal, APP for the State – Respondent.
- Mr.Mahesh Anjanwad, PSI, Shivajinagar Police Station, Mumbai is present in Court.
- CORAM : R.M. JOSHI, J.
- DATE OF RESERVE : 18TH MARCH, 2026.
- DATE OF PRONOUNCEMENT : 24TH MARCH, 2026.

ORAL ORDER:-

1. This application for regular bail has been filed in connection with C.R. No.246/2024 registered with Shivaji Nagar Police Station, Mumbai for offence punishable under Sections 8(c) & 22(c) of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short '**the Act**')
2. It is the case of the prosecution that on 23.03.2024

while on patrolling duty, the Officers of the Shivaji Nagar Police Station found Applicant in suspicious condition. On noticing police he ran to the premises. He was followed. Upon his search, he was found in possession of 15 grams of mephedrone (for short '**MD**'). On enquiry with the Applicant, it was revealed that he had kept remaining quantity of MD in his house. During house search, Officers recovered 445 grams of MD. Applicant was taken into custody and was arrested on the same day. Pursuant to the filing of the FIR, investigation was done and on conclusion thereof, charge-sheet came to be filed.

3. Learned Counsel for the Applicant submits that there is violation of Section 50 of the Act and there is no specific endorsement of the Applicant on the notice under Section 50 of the Act declining to be searched before the Gazetted Officer or a Magistrate as mandated by the Hon'ble Supreme Court in the judgment of *Ranjan Kumar Chadha vs. State of Himachal Pradesh*, 2024 All SCR (Cri) 127. This judgment came to be delivered on 06.10.2023 and as per the observations made in paragraph 63 of the said judgment, it is imperative on the part of

the Empowered Officer to seek writing duly signed from the person who is searched in the presence of Empowered Officer as well as other officials of the squad that he is apprised of his right before the Gazetted Officer or a Magistrate in accordance with Section 50 of the Act and further he declines on his own free will and volition that he would not like to exercise such right. It is submitted that for non-compliance of said order of the Hon'ble Supreme Court, this is a fit case for accepting failure of compliance of mandatory provision of Section 50 of the Act. He further submits that here in this case, there is non-compliance of Section 42 of the Act as Officers when found Applicant allegedly running to the enclosed premises, they formed an opinion/reasonable belief that he had concealed contraband. In such circumstances, it was obligatory for the Officer concerned to record the same and at least to record it at later point of time and communicate the same to the Superior Officer within period of 72 hours. It is submitted that non-compliance of Section 42 of the Act as held by the Hon'ble Supreme Court in case of ***Sarija Banu (A) Janarthani alias Janani and Another vs. State through***

Inspector of Police, 2004 AIR (SCW) 7488, it would entail in considering the application for grant of bail. He further submitted that 445 grams of MD was not recovered from the Applicant's possession and the said is allegedly recovered from the steel tray kept in the fridge in the premises. It is argued that as per the case of prosecution, wife of the Applicant was present in the house, however, neither her statement is recorded nor her signature is obtained on panchnama. It is further submitted that there is no evidence in order to show that the said premises belong to the Applicant in order to attribute the said recovery to him. Finally, it is argued that habitual panch are used in the case which makes the case of prosecution unreliable. To support this submission, reliance is placed on order of Coordinate Bench of this Court in Bail Application No. 4047/2023. It is further claimed that there is non-compliance of Section 52(A) of the Act as the certificate issued by the Magistrate is not as per the Form 5 of the NDPS Rules, 2022. To support this submission, reference is made to the judgment in case of *Chandrabhan Janardan Yadav Vs. State of Maharashtra* passed in Criminal Bail Application No.

2254/2024. By referring to CA report, it is argued that the white/yellow color crystal powder as allegedly recovered from the Applicant turned out to be a brown sticky lump with crystals in the CA report. This, according to him, creates doubt about the seizure at the instance of the Applicant and creates the possibility of tampering of the evidence. On the amongst other contentions enlargement of applicant on bail is sought.

4. Learned APP opposed the said submissions firstly by pointing out that herein this case 445 grams of MD has been recovered at the instance of Applicant. It is further argued that this is not the case wherein any prior information was received by the concerned Officer with a regard to the Applicant having in possession of the contraband articles. It is submitted that since suspicion was raised and as the Applicant started running, it became essential on the part of the Officer concerned to follow the Applicant and take search, so also to search premises in which he was found. It is pointed out that there is notice given under Section 50 of the Act and the right of the Applicant to be searched in presence of Gazetted Officer or a Magistrate has

been duly communicated and since it was denied by the Applicant of getting searched before the said Authorities, there is no infirmity in the compliance of Section 50 of the Act. It is further argued that there is no substance in the contention of the Applicant with regard to entering the house after sunset as having regard to the situation faced, there was no other option for the Officers but to follow the Applicant and consequently enter the said premises. It is argued that said facts are self-explanatory. With regard to alleged allegation of panch witness being habitual, it is contended that it is a matter of trial wherein Trial Court is required to consider the authenticity of the testimony of said witness. With regard to seizure of 445 grams MD from the premises, it is contended that panchnama of seizure clearly indicates that Applicant went into said house wherein recovery has been done. In so far as change in the colour of the seized contraband, reliance is placed on the opinion of CA dated 19.12.2025 indicating that on lapse of time and due to atmospheric influences, there is possibility of change in the colour of narcotic drug. With regard to non-compliance of

directions in para 63 of the judgement in case of ***Ranjan Kumar Chadha Vs State of Himachal Pradesh, 2023 SCC OnLine SC 1262***, it is submitted that there cannot be compulsion on the accused to write anything in particular as per dictate of police/Empowered Officer. It is contended that consequence of the same would be a matter to be considered at the stage of trial. It is thus submitted that having regard to these facts, there is no substance in the bail application and the same be rejected.

5. There cannot be any dispute made with regard to the fact that Section 50 of the Act is mandatory in nature and it is obligation of the concerned Officer or empowered Officer to apprise the person who is to be searched of his right to get searched in presence of Gazetted Officer or a Magistrate. The Hon'ble Supreme Court in case of ***Ranjan Kumar Chadha*** (supra) while referring to with the judgments of Constitutional Bench has held that before conducting search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally that suspect has right of being searched in presence of Gazetted Officer or a Magistrate. Here in this case

apart from mention in the search panchnama, there is evidence of such communication being made in writing to the Applicant. In so far as non-compliance of direction issued in ***Ranjan Kumar Chadha (supra)*** as reflected in paragraph 63 thereof about obtaining specific writing from person who is to be searched, this court finds substance in the contention of prosecution that it may not be possible to compel an accused/ person searched to write down remark as per dictate of police/ Empowered Officer and in any case in view of settled position of law that the communication of right to be searched in presence of Gazetted Officer or Magistrate orally, at this stage this would not become a ground to grant bail as it does not go to the root of the matter but it would be an issue while determining acceptance of defence of the accused during trial. In considered view of this court, it would not become a reason for grant of bail.

6. In so far as compliance of Section 42 of the Act is concerned, it is appearing *prima facie* from the record that this is not the case of prior information to the concerned Officer with regard to the Applicant carrying narcotic substance. It is on the

spot when the Applicant was found in suspicious manner and ran towards the premises, he was followed by the Officers and it is at this stage after giving him notice under Section 50 of the Act, his personal search was taken. During his personal search, 15 grams of MD was found. The premises to which Applicant ran and found, there was further seizure of 445 grams of MD from it. On the face of it, said evidence indicates that Applicant had nexu with the premises from which the commercial quantity of MD is seized. In case there is a charge against the owner of the premises storing the contraband u/s 25 of the Act, the investigation on to the ownership of premises would become absolutely essential. Since no such charge is made, it cannot lead to rejecting case of prosecution. It is a matter of trial and it is for the Trial Court to determine objections/defences raised by the accused with regard to ownership of the premises, non obtainment of the signature of the wife of the Applicant so also the issue as to the acceptability of the evidence of panch witness. Having regard to these facts, the judgment in case of ***Sarija Banu*** (supra) would not help the Applicant in any manner.

7. In case of **Abdul Shaikh** (supra), Coordinate Bench of this Court while considering the objection with regard to stock panch has held that the Court cannot simply brush aside the fact that the panch therein acted as panch witness in so many cases. It is further observed that if there are concomitant circumstances, the fact premier agency employees the same panch witness in number of cases may impair search and seizure in given case. It is thus clear from the said order that no law has been laid down that in case of stock panch being used, it would lead to grant of bail. Needless to say that it is not open for this court to decide veracity or otherwise of evidence to be led before trial court. Any observations made in this regard would amount to influencing the trial.

8. With regard to non compliance of Section 52(A) of the Act, reliance came to be placed on the order of Coordinate Bench of this Court in case of Chandrabhan Yadav (supra) in order to argue that non compliance can vitiate the statutory procedure and lead to the grant of bail even under the stringent provisions of Section 37 of the Act. With utmost respect to said view, this

Court finds that in view of judgment of Hon'ble Supreme Court in case of *NCB Vs Kashif* applicant cannot take benefit of the same. In the said case Hon'ble Supreme Court while dealing with the issue regarding the non-compliance of Section 52A of the said Act, has held that introduction of Section 52A, which was followed by standing order No. 1 of 1989 came to be issued by the Central Government as it was considered necessary and expedient to determine the manner in which narcotic drugs and psychotropic substances should be disposed of after their seizure, having regard to their hazardous nature, vulnerability to theft, substitution, and constraint of proper storage space. It is held that, as per the well settled rule of interpretation, the Section Heading or Marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The Section Heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble. It is

then held that Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substance, considering their hazardous nature, etc. It is further held that there cannot be any two opinions on the issue about early disposal of the contraband drugs and substances, particularly when it was inserted to implement provisions of international conventions on narcotic drugs and psychotropic substances.

9. By referring to Section 54 of the Act, it is observed that as per Section 54 of the said Act, the Courts are entitled to presume, unless and until contrary is proved, that the accused had committed, an offence under the Act in respect of any narcotic drug or psychotropic substance, for possession of which he failed to account satisfactorily. Therefore, unless such presumption is rebutted by the accused during the course of trial, there would be a prima facie presumption that the accused had committed the offence under the Act, if he is found to have possessed the contraband drug and substance, and if he fails to account satisfactorily, as contemplated in the said provision of Section 54. An anomalous situation would arise if a non-

compliance or delayed compliance of Section 52A is held to be vitiate the trial or entitle the accused to be released on bail. though he is found to have possessed the contraband substance, and even if the statutory presumption is not rebutted by him. Such could not be the intention of the legislature.

10. The Hon'ble Supreme Court thereafter summarised its discussion as under :-

“ (i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object, and purpose of the Act: as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose, and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A, laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the

procedure as contemplated in sub-section (1) thereof, any any lapse or delayed compliance thereof would be merely a procedural irregularity, which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

11. As far as the submissions of the Counsel for the Applicant relying upon the CA report indicating change in the colour of the contraband articles as reflected in the report is concerned, *prima facie* there is material to indicate that the seized articles in sealed condition were sent to CA for examination. This, therefore, rules out the possibility of tampering at least at this stage. Moreover, there is opinion given

by the CA with regard to change in colour of the contraband owing to the atmospheric effects.

12. Having regard to special provision of Section 37 of the Act, unless there is apparent non-compliance of mandatory provisions which would ultimately may vitiate the seizure, only could be considered for grant of bail and not non-compliance of rules or aspects which could be explained during trial by the prosecution. Since in the instant case there is no non-compliance of core provisions of Act, which would vitiate seizure and consequently trial. In view of this, this Court finds no reason or justification to grant bail to the Applicant as this Court is not of the view that the Applicant has not committed offence nor he is likely to commit offences if enlarged on bail. Hence, Bail Application stands rejected.

(R.M. JOSHI, J.)