

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 5292 OF 2024

VASANT
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Ms. Amoin Marie Kouame

...Applicant

Versus

Intelligence Officer & Anr.

...Respondents

Mr.Advait Tamhankar i/b Mr.Shekhar Bhandary for the Applicant.

Ms.Sangeeta Yadav for Respondent No.1 -DRI.

Mr.S.K. Gajare, APP for the Respondent – State.

CORAM : R. M. JOSHI, J
RESERVED ON : 30TH MARCH, 2026
PRONOUNCED ON : 6TH APRIL, 2026

PC:

1. Applicant seeks bail in connection with Crime No. DRI/MZU/C/INT-157/2023 for the offences punishable under Sections 8(C), r/w Sections 21(c), 23(c), 28, 29, 30, 35 & 54 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. It is a case of the prosecution that on 20.12.2023, intelligence was received by DRI that one foreign national Ms. Amoin will be arriving at CSMI Air Port at around 2.35 am from Ethiopia. The intelligence indicated that she might be carrying Narcotic Substance. A note therefore was put up

to the Senior Intelligence Officer, C Cell, DRI. A direction was issued in this regard to take appropriate action. Panchas were called. A lady was intercepted by the officer. Her passport and boarding pass were obtained. She was having one gray colour handbag and one black colour trolley bag. She was questioned about carrying Narcotic Substance, if any. She declined. She was apprised of her right of being searched before Gazetted Officer or a Magistrate. She opted for a search before Gazetted Officer. Hence, a lady Gazetted Officer i.e. Air Custom Superintendent was called. The said Superintendent took personal search of the applicant in presence of lady panchas. Nothing incriminating was found in her personal search. Thereafter, her handbag was searched and two packets were found containing 198 gms white substance which is purported Cocaine. A total quantity of 1273 gms was found in the said bag. Investigation was carried out and on completion thereof, charge-sheet is filed.

3. Applicant contends that this is a case of false implication. It is claimed that her search was taken in presence of male officers being members of the raiding team and hence there is violation of Section 50(4) of the Act. There are other grounds for seeking bail such as mixing of the contents of two different packets in one, which is contrary to the rules. It is also claimed that the applicant had no knowledge of any contraband in the bag. Finally, the bail is sought also on the ground of long incarceration as the applicant is arrested on 21.12.2023.

4. Learned Counsel for the applicant seeks bail of the applicant solely on the ground that there is a contravention of provisions of Section 50(4) of the Act as the applicant being lady ought not to have been searched in presence of male. To support this submission, reference is made to the judgment of the Division Bench of this Court in case of Veneela Tilak vs. Shahasane and Another, 1997(2) Mh.L.J. 337. Reference is also made to the orders passed by the Coordinate Benches of this Court.

5. Learned Special Prosecutor appearing on behalf of DRI opposed the application. It is claimed that this is a case of seizure of commercial quantity which is huge in nature. It is submitted that all other provisions are duly complied including provision of Section 50(4). It is also contended that perusal of the record does not indicate that the personal search of the applicant was taken in presence of male person. She further argued that in fact the search has been taken by the Gazetted Officer who is lady. It is thus contended that there is no question of grant of bail to the applicant on this count. To support the submissions, reliance is placed on judgment in case of Ranjan Kumar Chadha vs. State of Himachal Pradesh, 2023INSC878 to claim that Section 50 has no application in case of search of a bag.

6. Since the bail is sought by the Applicant solely on the ground of non compliance of Section 50(4) of the NDPS Act, this Court without going into any other issue it needs to be seen whether the Applicant is entitled for bail. Applicant is a lady. She was apprehended at Chhatrapati

Shivajimaharaj International Airport on 21.12.2023. A commercial quantity of contraband substance was seized from her bag. After she was informed of her right to seek search in presence of the nearest Gazetted Officer or nearest Magistrate and she having chosen to be searched before Gazetted Officer, a lady Gazetted Officer i.e. Air Custom Superintendent was called. As recorded in panchnama, the search of Applicant was taken by the said lady Gazetted Officer. There is specific mention in the panchnama about the said search being carried out in presence of panchas who were females and from her personal search, nothing incriminating was recovered from the Applicant. The dispute is with regard to the validity of the search starts from this point onwards.

7. It is contended by the learned Counsel for the Applicant that from panchnama, it is clear that in presence of male officers i.e. Intelligence Officer of DRI search of the handbag and trolley bag of the Applicant was done. According to him, reference of the male officer Shri Saurabh Parle, Intelligence Officer, DRI, Mumbai Unit (MZU) decided to examine bag shows that it was done in presence of a male. In order to support submission that on that count, the search gets vitiated reference is made to the judgment of Division Bench of this Court in case of Veneela Tilak (supra) and order passed by Coordinate Bench of this Court in case of Miss. Heena Bharat Shah vs. State of Maharashtra, Bail Application No. 1051/2016, Zalwango Moureen @ Anita vs. The State of Maharashtra, Bail Application

No. 260 of 2024 and Husainbi Faqueer Shaikh vs. Union of India & Anr, Bail Application No. 2835/2023.

8. In case of Veneela Tilak (supra), Division Bench has made following observations:

15. Now if a woman accused has to be searched, merely calling a female officer to search her will not fulfill the legislative intent. The legislative Intent appears to be to protect the lady accused's modesty while conducting her search. The search has to be conducted by having strict regard for decency. Therefore, the officers will necessarily have to secure the presence of lady panchas. If the search is carried out in the presence of male panchas, the very purpose of Sub-section (4) of Section 50 of the N.D.P.S. Act and such similar provisions contained in other statutes would be frustrated. What is sought to be achieved by Sub-section (4) of Section 50 of the N.D.P.S. Act, the relevant provisions of Criminal Procedure Code quoted herein above and similar provisions of the Customs Act and the F.E.R.A. would be lost if the investigating agency does not carry out the search by a female in the presence of female panchas.

9. It is thus clear that the Division Bench has held that the search of the lady must be carried out in presence of female panchas. Relying upon the judgment of Full Bench in Criminal Bail Application No. 531/1993, it is held that lady accused would also mean the search of articles on her person or body or search of articles in her immediate possession such as bag or other baggage carried out by her or in her physical possession.

10. The Coordinate Bench of this Court in case of Heena Bharat Shah (supra) has held that in that case the Applicant a lady was searched within a gaze of males and not in seclusion and in absence of male person.

Similar is the observation in case of Zalwango Moureen @ Anita (supra). In case of Hussainbi Faqeer Shaikh (supra), the search was done in presence of male panchas and hence, though search was done by the lady police officer, since it was done in presence of male panchas, it was held to be violating mandatory provisions of law. In case of Zalwango (supra) the lady accused therein was searched by males. These orders, therefore, shows that personal search of lady was alone either by male panchas, male officer or within gaze of a male.

11. Needles to say that a lady was searched in presence of male or not would have to be decided on the basis of facts of each case. In this regard, it would be relevant to take note of the panchnama of search and seizure.

“Before conducting the personal search, the officer in the presence of Mrs. Rupam Kumari, Air Customs Superintendent and we, the panchas, offered for personal search to Amoin Marie Kouame, which was politely declined by her. Thereafter Smt. Asha Panicker, in our presence and in the presence of Mrs. Rupam Kumari, Air Customs Superintendent, took the personal search of Amoin Marie Kouame, nothing incriminating was recovered from her personal search.”

It is, therefore, clear from the recording of panchnama that the search of person of applicant taken by the lady Gazetted Officer and in presence of female panchas and that neither it was done within gaze of a male.

The panchnama further records that:

“Thereafter, in presence of us, the Panchas, Mrs. Rupam Kumari and the passenger Amoin Marie Kouame, the officers decided to examine the grey coloured handbag and the black colored trolley bag having "Prosperity" marking on it which Amoin Marie Kouame was carrying with her, when she arrived in Mumbai from Addis Ababa vide Ethiopian Airlines flight ET640. The officers first took up the black coloped trolley bag having "Prosperity marking on it for the detailed examination Contents of this bag was emptied in our presence and in the presence of Mrs. Rupam Kumari and the passenger Amoin Marie Kouame. Upon detailed examination nothing incriminating was found from the black colored trolley bag having "Prosperity" marking on it.”

12. Panchnama, therefore, reflects as to what exactly has transpired in presence of panch witnesses and from the same, it cannot be held that personal search of the Applicant being taken by or in presence of any male. In orders of Coordinate Bench of this Court cited (supra) search of the female was taken either by the male panchas or in presence of male. Here in this case, there is nothing on record to indicate that personal search of the Applicant was taken in presence or within gaze of male.

13. Now question arises with regard to the observations of the Division Bench relying upon the Full Bench in Criminal Appeal No. 531/1993 that to search any person used in Section 51 of the NDPS Act a search of the lady accused would also mean search of articles on her person or body or search of articles in her immediate possession such as bag or other luggage carried by her. Pertinently, in Full Bench judgment no notice under Section 50 was given before personal search. As far as position of law,

which is now settled in view of the judgment of Hon'ble Supreme Court in case of Ranjan Kumar Chadha (supra), Section 50 has no application in respect of search of any bag or any article on the person except for his/her apparels. It is pertinent to note that this observation is made after considering the fact that personal search as well as search of bag of accused was done and from bag charas was recovered. It is ultimately held in paragraph 12 as under:

125. For all the foregoing reasons, we are of the view that the High Court was justified in holding the appellant guilty of the offence under the NDPS Act and at the same time, the High Court was also correct in saying that Section 50 of the NDPS Act was not required to be complied with as the recovery was from the bag.

In view of the position of law being settled now with regard to the applicability of Section 50, it is not possible to accept that search of the handbag and trolley bag of the Applicant, even if accepted to be done in presence of Intelligence Officer, who is male, cannot be considered as violation of Section 50 of the Act.

14. In so far as Section 50(5) of the Act is concerned, search is required to be proceeded as provided under Section 100 of CrPC. Provision of Section 100 of CrPC indicates that the search of female is required by another female in order to maintain decency of the female while conducting search of a female, her body may come into contact or may need to be touched and, therefore, it should be done by a female. In case of a bag,

briefcase or container, they would ordinarily not searched along with body of a human being. The purse or bag, if any, carried in hand or shoulder would not be searched in that position and search of the same will require, it being removed from hand, unless there is material to indicate otherwise. In order to make such search, such type of baggage, body of carrier will not come in contact of a person conducting search. Thus, it cannot be said that the search of a woman is not conducted by maintaining her decency.

15. Once it is held that Section 50 has no application to the search of a bag, and as question of the decency of the Applicant being not involved in the search of hand bag as well as trolley bag, it does not become a ground for vitiating the search.

16. Herein this case, commercial quantity of contraband has been seized from the Applicant and as such, the rigors of Section 37 would apply. The said provision requires proper grounds of bail, the Court to have reason to believe that the Applicant is not guilty of the offence and is not likely to commit the offence, if granted bail. Since the search of the bag of the Applicant does not violate Section 50 of the Act nor it can be said to be case wherein the Applicant's decency was breached by the act of search of the bag, question of vitiating the seizure does not arise.

17. As a result of above discussion, application deserves to be dismissed and the same is accordingly rejected.

(R. M. JOSHI, J.)