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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

CRIMINAL BAIL APPLICATION NO.5294 OF 2024

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Chukwu Emmanuel Onyebuchi	...Applicant
V/s.	
State of Maharashtra	...Respondent

Mr.Khushal Parmar with Mr.Sumant More for the Applicant.

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

Mr.Salunke, API, Malvani Police Station is present in Court.

CORAM : R.M. JOSHI, J.
DATE : 25TH MARCH, 2026.

P.C. :-

1. Applicant seeks regular bail in connection with C.R. No. 1205 OF 2023 of the offences under Sections 8(c) r/w 21(b) and 22(c) of Narcotic Drugs Psychotropic Substances Act,1985 (for short 'NDPS Act').
2. On 12.09.2023 at 04.25 pm the patrolling team under the supervision of API Nilesh Salunke left for Patrolling duty near Malvani Police Station beat no.1., the patrolling team

reached near the public toilet of Manavsthal Building, Mahakali Nagar, Katcha road, Malvani, Malad West, Mumbai at 04.45 pm and Applicant was seen standing suspiciously at the corner of road. On seeing the patrolling team, the applicant got worried and he started to run away from the spot towards Charkop graveyard. The API Nilesh Salunke asked the applicant that why he had come to this place, he initially hesitated but then in his reply he said that "I had come to this place to sell Cocaine". The above information was given to the Sr. PI Aadhav through mobile phone by API Nilesh Salunkhe. Accordingly. Sr. PI Aadhav directed to investigate the matter and take action under the guidance of day shift supervisor PI Sainath Hingmire. Constable Patil arranged two panchas to conduct the personal search of the accused person. PI Sainath Hingmire issued notice u/s 50 of the NDPS act, 1985 wherein the applicant stated in his reply to notice that "I agree to police can search me" and he showed his willingness to take his personal search before police officer. API Nilesh Salunkhe had taken a search of applicant. A transparent plastic bag containing white colour powder

substance was found in his right front pocket of black colour pant. The white colour powder substance was tested and found to be weighing 5 grams of Cocaine. In search of left front pocket of his black colour pant, a transparent plastic bag with zip lock containing white colour and white colour powder substance was tested and found to be weighing 75 grams of Mephedrone. After taking search of the contraband, it came to be weighing 5 grams of Cocaine and 75 grams of Mephedrone which came to be seized under Panchanama dated 12.09.2023. After weighing, sealing and labelling procedure was carried out and applicant was put under the arrest.

3. Learned Counsel for the Applicant argued in the same line of that application more particularly that there is gross violation and non-compliance of Section 50 of the NDPS Act, as the personal search was taken by the API but who was part of raiding team. His signature is also missing on the letter under Section 50 of the NDPS Act. He further argued that there is total non-compliance of Section 42 of the NDPS Act receiving signatures of superior police officials on the letter under Section

42 (2) of the NDPS Act. The panch used for preparing panchnama under Section 52A of the NDPS Act, was panch being used in another case. It is also contended that Photographs are not certified by the learned Magistrate. He further argued that as per the Judgment of the Hon'ble Apex Court, Section 52A proceeding have to be completed within reasonable time and samples were sent after 27 days. To support this submission, reliance is placed on the order of Supreme Court in case of **Rambabu vs. State of Rajasthan, Special Leave Appeal (Criminal) No.5648 of 2025**. There is gross violation of Sections 52 and 55 of the NDPS Act. There is no C.A. report till the date. Therefore, the accused is entitled for default of bail and prayed to allow the same. Reliance is also placed on order of Coordinate Bench of this Court in Bail Application No.3189 of 2024, in case of **Frank Ezi vs. State of Maharashtra**.

4. Learned APP on behalf of the state contended that during patrolling, the accused was found in suspicious manner and on search of person of accused, illegal possession i.e. 05 grams Cocaine and 75 grams Mephedrone (MD) was found. As

commercial quantity of MD is found with the accused the rigors of Section 37 of the NDPS Act would apply to the present case.

5. *Prima-facie* perusal of record indicates that this is a case where during patrolling Applicant was found in suspicion circumstances. In presence of panch witnesses before conducting his personal search, notice under Section 50 of the Act, appraising right to be searched in presence of Gazetted Officer or Magistrate. Similarly, there is compliance of Section 42 of the Act as communication to superior officer has been made in reasonable time. Thus this is not a case where there is any infirmity in following the procedure which would vitiated recovery / seizure itself.

6. The Applicant has led stress on non-compliance of Section 52A of the Act. On this point, in so far as the compliance of Section 52A is concerned, reference can be made to the summary of observations made by Hon'ble Supreme Court in judgement of in case of *NCB Vs. Kashif, (2024) 11 SCC 372*, which is as follows:-

“50. The upshot of the above discussion may be

summarized as under:-

“50.1 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.

50.2 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.

50.3 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.

50.4 Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and 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.

50.5 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.

50.6 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.” (emphasis supplied)

7. Learned Counsel for the Applicant relied upon the judgement of Hon'ble supreme Court in case of **Surepally Srinivas Vs. State of Andhra Pradesh, 2025(2) Crimes 250(SC)** to explain the non-compliance u/s 52A, wherein the bail was granted to the accused. Perusal of the said judgment however, indicates that on the basis of reasonable suspicion that the contraband was tampered, as appeared from the evidence on record it was clear that the seized contraband was not properly sealed. Thus in altogether different facts, said order of bail came

to be passed. In the instant case, no such eventuality exists.

8. A perusal of material on record shows that there is apparent due compliance of the mandatory procedures contemplated under provisions of Sections 42 and 50 of the Act. The alleged non-compliance is not fatal to the case of prosecution since it does not go to show that seizure itself is illegal. Moreover, on the face of it no prejudice is shown to have been caused to the accused. Here, a fruitful reference can be made to the judgement of Hon'ble Supreme Court in case of State of *Madhya Pradesh Vs. Kajad, 2001(7) SCC 673*, while discussing the scope of Section 37 of the Act has observed thus:-

“5.....A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition

to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

9. This court therefore has no reason to believe that Applicant has neither committed offence nor that he would not commit an offence if he released on bail. Therefore, it is not a fit case for grant of bail.

10. Hence, Application stands dismissed.

(R.M. JOSHI, J.)