

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

CRIMINAL BAIL APPLICATION NO. 1382 OF 2025

**MR. SAUD SIRAJ SAYED
VERSUS
STATE OF MAHARASHTRA**

Mr. Gaurav Bhawnani, Advocate for the Applicant
Mr. Mayur S. Sonavane, APP for Respondent/State

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CORAM : R. M. JOSHI, J.

DATED : 2nd APRIL, 2026

PER COURT :-

1. Applicant seeks Regular Bail in connection with Crime No. 212 of 2024 registered with Kashigaon Police Station, Mira Bhaindar, Virar for the offences punishable under Sections 8(c), 22(c), 29 in Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and Section 14(A) in Foreigners Act, 1946.

2. In short, it is a case of the prosecution that confidential information was received by Constable Pagdhar from the secret informant regarding sale of Mephedrone (MD), a narcotic drug. The information disclosed that Saud Sayyed along with a South African woman Sabrina was to

arrive at Ghodbandar, RTO Road to sale drugs between 12.30 pm to 1.15 pm. The information came to be recorded in the information book and the said information was forwarded to Assistant Commissioner of Police (Crime) under Section 42(2) of the Act. Approval came to be granted by said Authority for taking further action. Accordingly raiding party visited the spot where the said persons were expected to come for sale of drugs. On 21.07.2024, panchas were called and pre-raid panchnama was prepared. The raiding team took all requisite material for the purpose of the raid. At about 12.45 p.m. a man and woman matching to the description given by the informant about the suspects arrived at the spot. The man was carrying black sack bag and a woman had a black bag with a yellow stripe on its back. They appeared to be waiting for someone and were conversing with each other. As it was suspected that they were carrying narcotic drugs, they were surrounded and detained at the spot. However, since heavy rainfall was going on at that time, difficulty was faced for conducting search as in case any contraband is found the same was likely to be damaged and as there was chance of loosing the evidence, they were taken to Anti Narcotic Cell (ANC) office along with panch witnesses. At the said office, they were apprised of their right under Section 50 of the Act and since, applicant did not choose to be searched

before a Gazetted Officer or a Magistrate, his search was undertaken. In his search, he was found in possession of contraband MD of commercial quantity. After conclusion of investigation, charge-sheet came to be filed.

3. It is claimed by the applicant that at the time of their arrest of applicant, the alleged contraband was not weighed nor the event of seizure/search was video graphed. It is claimed that this is a case of false implication and concocted story has been created to falsely involve applicant in this crime. It is also claimed that the contraband has been planted when the applicant and the lady accompanying him were taken to the police station. It is further claimed that, in the entire charge-sheet, there is no logbook filed indicating the travel of the police vehicle. It is also claimed by the applicant that there is no evidence in order to connect him with the crime including evidence with regard to transfer of any amount etc. It is also claimed that the search is not conducted by the Gazetted Officer or a Magistrate and the applicant was compelled to give in writing that, he does not wish to be searched in their presence.

4. Learned Advocate for the applicant submits that the raiding team has not conducted search of the applicant and co-accused at the spot where they were apprehended. It is his submission that in order to ensure that no

doubt remains about the seizure from or at the instance of the applicant, the search ought to have been taken at the spot where he was accosted. He submitted that the ground taken of rain fall is false in view of fact that umbrella carried by the applicant was not seized during the panchnama. He submits that the right of search in presence of Gazetted Officer or a Magistrate ought to have been communicated forthwith after apprehending of the applicant and co-accused at the spot. He further submits that the doubt is created about the spot/place at which the seizure has been carried out as the seizure is said to be done in the office of ANC whereas the place mentioned is the spot where they were accosted first. It is his further submission that herein this case, there is no recovery of the bag allegedly held by the applicant and in absence of the said recovery being shown, the seizure of contraband becomes doubtful. It is his further submission that in this case to the inventory is stated to have been done on the next day, however, the certificate of the Magistrate is obtained one week after the inventory. It is his contention that there is non compliance of Section 52A of the Act which entitles applicant bail.

5. Learned APP opposed the application by contending that from the present applicant as well as co-accused a total Mephedrone (MD) of 1009 gms came to be seized out of which 504.1 gm was found in possession of the

applicant. It is his submission that in view of the fact that the said contraband is of commercial quantity, applicant is not entitled for bail in view of embargo created by Section 37 of the Act. He drew attention of the Court to the panchnama in order to argue that there is a recording in the panchnama with regard to the fact that it was raining at the relevant time and that made practically impossible for the raiding party to seize the contraband article which could be in the form of powder. It is his submission that the facts themselves are sufficient to explain the reason for which applicant and co-accused were taken to the office of ANC. He further drew attention of the Court to the panchnama indicating recovery of black color bag and blue color pouch from the present applicant. Finally it is argued that very next day of the seizure of the contraband articles, along with inventory seized articles were produced and inventory panchanama was drawn before the Magistrate and only for the reason that the Magistrate issued certificate after eight days, applicant is not entitled to seek bail. According to him in view of the judgment of Hon'ble Supreme Court in case of *Narcotics Control Bureau Vs. Kashif*, **MANU/SC/1384/2024** any inconsistency in compliance of Section 52A of the Act is explainable during the trial and does not become a ground for grant of bail.

6. At the outset this Court would like to deal with the contention of the applicant that the applicant and co-accused ought not to have been taken to ANC office and their search should have been undertaken immediately at the spot where they were accosted. The perusal of the record however indicates that the panchnama was drawn in presence of independent panch witnesses which indicates that when the applicant and co-accused were accosted, it was raining heavily. In such circumstances, if the raiding officer apprehends that conduct of search and seizure at that place which is on road in heavy rain would damage the incriminating evidence such as the contraband if it is found to be in form of powder and that would amount to loosing incriminating evidence, unless otherwise shown, no fault could be found with such decision. The situation in which the decision was taken to take the applicant and co-accused to ANC office is self explanatory and no malafide can be attributed in that regard against officer. Apart from this merely because there no recovery of umbrella being shown in panchnama, it cannot be believed that it was not raining at the relevant time, in view of the fact that panchnama indicates so and the same is signed by independent panchas.

7. Now the question arises as to whether it was necessary for the officer concerned to intimate the applicant and co-accused about their right of being searched before the Gazetted Officer or a Magistrate ought to have been communicated at the spot and the said communication could not be deferred to the ANC office. To decide the said issue, it would be relevant to take note of Section 50 of the Act which reads thus:

50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(emphasis supplied)

(2)

(3)

(4)

(5)

(6)

8. A perusal of this provision indicates that when any officer is about to search any person under the provisions of Sections 41, 42 or 43 he shall apprise, such person of his right of being searched in presence of nearest Gazetted Officer or nearest Magistrate. The said provision clearly indicates that this appraisal is mandatory when the officer is about to search meaning thereby just before search or before conducting personal search, it is

obligatory for the officer to inform such person of this right. Needless to emphasis that every word used by the legislature needs to be given its appropriate meaning, as no word is used by legislature without any purpose. The above provision thus requires the appraisal of right of the person to be searched before the Gazetted Officer or Magistrate just before i.e. when the officer is about the search such person. Herein this case, the search has been conducted in ANC office and just before conducting the search, the applicant was apprised of his right in that regard. Even in ANC office before conducting search, it was open for applicant to seek search before Gazetted Officer or Magistrate. He in spite of being apprised of this right, did not seek the same. This Court, therefore, finds no substance in the contention of the learned Advocate for the applicant that this amounts to non compliance of Section 50 of the Act resulting into making out case for grant of bail.

9. There cannot be any dispute made with regard to the submissions made by the learned Advocate for the applicant that in ordinary circumstances the search ought to have been conducted where the persons were accosted in order to rule out the possibility of false implication and planting of contraband. However, when the facts are self explanatory and which would have made not possible for the officer to carry out search and

seizure without causing damage to the incriminating evidence, more particularly when the evidence could be a narcotic drug in the form of powder. In such circumstances, unless shown otherwise, there is no presumption that the officer acted malafide and applicant was taken to ANC office with ulterior motive and it is a case of planting of narcotic substance. Prima facie perusal of the record shows that the panch witnesses were present for the entire period from the time applicant and co-accused who were accosted and they were taken to ANC office. Thus, at this stage at least, case of the applicant of false implication does not deserve acceptance.

10. It is further case of the applicant that a doubt is created with regard to the seizure of contraband in view of the fact that the contraband was said to have been found in black color bag, however, the panchnama does not indicate seizure of the same. In this regard perusal of the panchnama shows that there is a mention therein of the bag from which the blue color plastic pouch was seized containing white color powder (MD), being seized. Thus, there is no substance in the said contention of the applicant about the absence of the bag in the panchnama and therefore, it cannot be said that there is any doubt created in respect of the seizure of the contraband.

11. Insofar as non compliance of Section 52A of the Act is concerned, prima facie perusal of the record indicates that on the next day of the seizure of the contraband article, it was sent to the Magistrate along with inventory for panchnama. The issuance of certificate by Magistrate after eight days thereof would be explainable during the trial. The Hon'ble Supreme Court in case of *Narcotics Control Bureau Vs. Kashif* (supra) has held that any infraction in compliance of Section 52A of the Act does not become a ground for grant of bail.

12. In view of the above facts, this Court finds no reason to believe that the applicant has not committed the offence charge against him under the Act nor has reasoned to accept that on enlargement on bail applicant will not commit similar crime. In view of the fact that the seized contraband is of commercial quantity, rigours of Section 37 of the Act would certainly apply to the present case. Consequently, applicant has failed to make out any case or grant of bail.

13. Hence, application stands dismissed.

(R. M. JOSHI, J.)