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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1391 OF 2025

HAJI ABDUL REHMAN
VERSUS
STATE OF MAHARASHTRA

Mr. Anil G. Lalla a/w Mr. Yash Pulekar & Mr. Rushil Alag, Advocate for the Applicant.

Mrs. Sangeeta Shinde, APP for Respondent/State.

CORAM : R. M. JOSHI, J.
RESERVED ON 24TH MARCH, 2026
PRONOUNCED ON 6TH APRIL, 2026

PC.

1. This application for regular bail has been filed under Section 439 of Cr.P.C. (Section 483 of BNSS) in connection with Crime No. 101/2023 registered at the instance of Anti Narcotic Cell, Bandra Unit, Mumbai, in C R No. 101/2023 for the offences punishable under Sections 8(c) r/w 21(c), 27A, 28, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. In brief, it is the case of the prosecution that on 21.12.2023 at about 7.00 pm, PI Chavan, Anti Narcotic Cell left for patrolling along with drug testing kit and other tools and material. At about 20.40 hours, two individuals were found in suspicious circumstances. Since suspicion was raised against them, they were detained and panchas were summoned. After

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compliance of Section 50 of the Act, PI Chavan conducted search of the applicant which led to the recovery of Charas from the bag possessed by him to the extent of 1.5 kg. Apart from the said contraband two mobile phones so also cash of Rs. 400/- came to be recovered from him. Similar recovery was made from the co-accused. Along with the co-accused, the applicant was arrested on 22.12.2023. On the basis of disclosure statement of the applicant, from accused No. 3, 800 gm of Charas was recovered. On 29.12.2023, inventory panchanama was drawn before the Magistrate. The samples which were drawn before the Magistrate were forwarded to FSL. The FSL report confirmed that the seized contraband is Charas. On completion of investigation, charge-sheet came to be filed against the applicant and the co-accused on 27.3.2024.

3. Learned Counsel for the applicant submits that the co-accused were granted bail by the Special Court on 11.11.2024 and 23.01.2025. It is his further contention that the applicant is a senior citizen and is having health conditions. According to him, there is non-compliance of provisions of Section 50 of the Act as there is no writings obtained from the applicant/accused that he does not wish to exercise his right of being searched before a Gazetted Officer or a Magistrate. It is his submission that a bare signature of the applicant on notice under Section 50 is not a complete

compliance of the said provision. He further argued that since the directions issued in para 63 of judgment of the Hon'ble Supreme Court in case of ***Ranjan Kumar Chadha Versus State of Himachal Pradesh, 2023 INSC 878*** have not been complied and it is not obtained in writing from the applicant that he does not wish to be searched before the Gazetted Officer or a Magistrate, the applicant is entitled for bail. It is his further submission that the applicant has not been provided with the written grounds of arrest. In this regard, reference is made to the judgment of the Hon'ble Supreme Court in the case of Pankaj Bansal wherein it is held that it is the right of the applicant to get the grounds of arrest in writing. It is further argued that relying upon the said judgment, the Division Bench of this Court in case of Mahesh Pandurang Naik, Writ Petition St. No. 13839/2024 and also Writ Petition No. 17755/2024 in case of Hanmant Chaudhari the bail has been to the applicant/accused therein. Reference is also made to the fact that another Division Bench of this Court has referred the said issue to the Larger Bench in case of Vicky Bharat Kalyani. On these amongst other contentions, bail is sought.

Learned APP opposed the application by contending that there is *prima facie* compliance of mandatory provision of Section 50 of the act. It is argued that it is not open for the officer to compel the applicant to write anything. It is submitted that the co-accused have written specifically about they having

no such intention to get searched in presence of Gazetted Officer or a Magistrate. It is thus clear that the action of the officer is genuine and in the ordinary course co-accused refused the search in writing whereas the applicant refused the search orally before Gazetted Officer or Magistrate. It is also argued that there is enough material on record in order to infer that the grounds of arrest were duly given to the applicant. It is contended that having regard to provisions of Section 52, ground of arrest is required to be informed and not communicated to the applicant. It is submitted that the applicant was duly represented before the Magistrate by an advocate of his choice and that no grievance was made in this regard. It is thus argued that after filing of the charge-sheet and since there is evidence against the applicant, unless the twin conditions under Section 37 are complied, the applicant is not entitled for bail.

4. The first ground for seeking bail is that non compliance of the directions of the Hon'ble Supreme Court in case of Ranjan Kumar Chadha (supra) wherein it was directed to the investigating agency that the suspect should be asked to give his non willingness to be searched before Gazetted Officer or Magistrate in writing duly signed by him in presence of the empowered officer as well as the other officers of the squad. No doubt, said directions are binding with effect from the judgment since it is made

applicable prospectively. However, question arises as to whether non obtainment of the same in all circumstances would vitiate the recovery and it can be so held at the stage of bail and consequently, it would become a ground for grant of bail.

5. In this regard, it is material to take note of the submission of the learned APP who submits that it may not be possible for the police officer or empowered officer to compel the suspect to write down that he does not wish to seek search in presence of Gazetted Officer or a Magistrate. This submission cannot be discarded lightly for the reason that there could be numerous situations in which the issue may have to be considered i.e. officer calling upon the suspect to write so and his response thereto etc. Firstly, question is as to whether there could be compulsion on the suspect to write down anything as per the dictate of the police officer or empowered officer and to sign the same. What would be the consequence of the refusal of the suspect to write and sign the same would be a matter for decision depending upon facts of each case. Secondly, Hon'ble Supreme Court in the same judgment has held that in absence of any specific provision with regard to communication of right, the oral communication also would be sufficient compliance of Section 50 of the Act.

6. Once it is held that for want of any specific memo of communication,

the oral communication of the right also the compliance of Section 50, the search and seizure of the contraband would not get vitiated even in that case. Perusal of the said judgment and directions issued by Hon'ble Supreme Court indicates that they are issued to lend more credence to the compliance of Section 50 of the Act, which would lend authenticity, transparency and creditworthiness to the entire proceedings. In fact these directions aim at avoiding controversy about information of right under Section 50 of the Act and the denial of suspect to avail the same. Pertinently, it is not held therein that non compliance of same would lead to negating the seizure of contraband. Needless to say that all these aspects, in considered view of this Court, would be required to be dealt with and decided during the trial. Suffice it to say that unless the Court records findings on reason to believe of the non commission of offence and non committing of an offence in future, the power of the grant of bail cannot be exercised.

7. In the present case, record indicates that two persons were accosted simultaneously, both of them were independently informed of their right under Section 50 orally as well as in writing. Co-accused recorded specifically on the written notice that he understood his right and permitted also to take his search. However, notice issued to the Applicant was simply signed by him. It is not the case of the Applicant that he was not informed that the right to be

searched before the Gazetted Officer or a Magistrate nor he claims that he informed to the concerned officer even orally about his such intention. In the facts of the case, therefore, this Court finds no reason to accept the contention of the learned Counsel for the Applicant in this regard and in any case, it does not become a ground for grant of bail.

8. In so far as non furnishing of grounds of arrest is concerned, the question with regard to the effect of the same on ground of bail has been determined by the Hon'ble Supreme Court in case of Sri Darshan (supra), which reads thus:

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the Respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge Under Section 302 Indian Penal Code and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the Accused to bail.

9. In view of the law settled by the Hon'ble Supreme Court in above judgment, unless the Applicant shows any prejudice being caused to him by non furnishing of grounds of arrest, he would not be entitled to seek bail. It is not the case of the Applicant that he was not represented by the lawyer of his choice before the remand Court or before Special Court at the time of hearing of bail application. Apart from this, perusal of the arrest panchnama indicates that he was informed about the grounds of arrest. No grievance was made in this regard by the Applicant before the Magistrate when he was produced.

10. In so far grant of bail to the co-accused, record indicates that they were granted bail by the Trial Court in view of non applicability of Section 37 of the Act to them. With regard to the claim of Applicant for enlargement of bail on account of his age is concerned, having regard to the nature of crime and prima facie evidence on record showing applicability of rigors of Section 37 of the Act, he cannot be released on bail. Moreover, there is no medical condition brought to the notice of the Court, which could not be taken care in jail. Section 37 of the Act makes provision whereby the Court generally powered to grant bail is made subject to the satisfaction that the accused there is reason to believe that the accused has not committed crime and that he is not likely to commit the same in case enlarged on bail.

11. As a result of above discussion, application deserves to be rejected and accordingly, stands rejected.

(R. M. JOSHI, J.)