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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1850 OF 2025

Fahad Shabbir Ali Shaikh .. Applicant

versus

State of Maharashtra .. Respondent

Ms. Sherali S. Khan and Mr. Veeraaj Naik, Advocates for the Applicant.

Ms. Shilpa K. Gajre-Dhumal, APP for the State.

Mr.Awale, PSI, A.N.C. Azad Maidan Unit is present in Court.

Mr.Chavan, PSI, A.N.C. Azad Maidan Unit is present in Court.

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

P.C. :

1. Applicant seeks regular bail in connection with Crime No. 102/2023 registered with ANC, Azad Maidan Unit, Mumbai in connection with offences punishable under Sections 8(C), 22(C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. In short, it is the case of the prosecution that on 21.12.2023, as per the general directions received to take action against the seller and

purchaser of Narcotic Drugs, a team was formed by Azad Maidan Unit. Along with required material for conducting raid, they left the unit. At about 1.25 am, the team reached at Hayyat Farmacy. One person was apprehended. Panchas were called. A letter was prepared at the spot under Outward No. 1640/2023 regarding receipt of information. It was sent to the police station along with Police Naik Karande. The apprehended person knew Hindi language. The apprehended person was apprised with his right under Section 50 of the Act of seeking search in presence of Gazetted Officer or a Magistrate. Thereafter, his personal search was taken in which from his pocket off white colour powder purported to be MD was seized. The said seizure was confirmed to be contraband of commercial quantity. Enquiry with the said apprehended person laid the unit to accused No. 2 and 3 from whom incriminating recoveries were done. After compliance of Section 52 and 52A of the Act, charge-sheet came to be filed.

3. Applicant filed application with the contention that he is falsely implicated. It is claimed that there is non-compliance of mandatory provisions of Section 42 and 50 of the Act. It is claimed that the applicant was not orally apprised of his right being searched before the Gazetted Officer or a Magistrate and hence, there is non-compliance of

Section 50. It is claimed that the word 'legal right' is also not finding place in the written communication issued in this regard and hence it is non-compliance of the said provision. It is further claimed that the certificate of Magistrate is not in a format provided and hence, there is non-compliance of Section 52A in letter and spirit. It is also claimed that for want of record in respect of the movement of brass seal, this is a case of tampering and hence applicant is entitled to seek bail. Applicant claims that he has no antecedents and is not likely to flee. It is claimed that the applicant is in custody since 22.12.2023 and hence, after filing of the charge-sheet, his further custody is not necessary.

4. Learned Counsel for the applicant, by drawing attention of the Court to the charge-sheet, submits that this is a case wherein there is non-compliance of mandatory provisions of Section 42 and 50 of the Act. In this regard, it is further submitted that since the letter was sent to the concerned Police Station, the compliance of Section 42 becomes essential. In respect of compliance of Section 50, it is his submission that there is no oral information of his right to the applicant of being searched before the Gazetted Officer or a Magistrate and hence, there is non-compliance of the said provision. He further argues that the applicant has not been provided with the grounds of arrest and hence,

in view of the judgment of the Hon'ble Supreme Court in case of Pankaj Bansal vs. Union of India, **2023 INSC 866**, the applicant deserves bail.

She placed reliance on following judgments :-

- (i) Mohinder Kumar vs. The State of Panaji, Goa.
AIR 1995 Supreme Court 1157
- (ii) State of Orissa vs. Laxman Jena
(2009) 16 Supreme Court Cases 332
- (iii) Pankaj Bansal vs. Union of India & others
(2024) 7 Supreme Court Cases 576
- (iv) Mr. Joseph Achola Ouma vs. State of Goa & another
in Criminal Appeal no. 1069/2024
- (v) Mr. Hanuman Choudhary vs. The State of Maharashtra
in Writ Petition Stamp No. 17755/2024
- (vi) Mimit Ajit Bhuta vs. The State of Maharashtra
in Writ Petition No. 5552/2025
- (vii) State of Karnataka vs. Sri Darshan ETC
2025 LiveLaw (SC) 801

5. Learned Counsel for the Applicant further submits that even in written communication given to the applicant with regard to his right under Section 50, there is no reference of the word 'it is a legal right of the applicant to seek search in presence of a Gazetted Officer or a Magistrate'. It is his submission that this aspect has been considered by this Court in various orders and he made reference to the said orders. She relied upon order dated 21.04.2025 passed by Coordinate Bench in B.A. No. 597/2024, in case of Abul Wahid vs. State of Maharashtra.

6. Learned APP opposed the application firstly by contending that herein this case, there is compliance of Section 42 and 50 of the Act. It is contended that herein this case, no specific information was received in order to reduce the same in writing. In such circumstances what was required is a communication of the same as soon as possible. The letter with Outward No. 1640/2023 shows the compliance of the relevant provision of Section 42. In respect of the compliance of Section 50, it is contended that herein this case, there is a written communication given to the applicant apprising him of his right of having searched before the Gazetted Officer or a Magistrate. It is submitted that the word 'legal right' need not appear in the communication if the right of the person is communicated sufficiently to him. It is further submitted that there is specific reference in the panchanama indicating that apart from written communication, applicant was orally apprised of his right under Section 50 of the Act. With regard to the arguments in respect of non-furnishing of the grounds of arrest, it is contended that in view of the judgment of the Hon'ble Supreme court in case of State of Karnataka vs. Sri Darshan ETC (supra) communication of the grounds of arrest orally is sufficient compliance and in that case, the accused would not be entitled for enlargement on bail.

7. At the outset, it needs to be recorded that though arguments are advanced with regard to non-providing of grounds of arrest, however, perusal of the application does not indicate that this has been taken as a ground for seeking bail. No doubt, before the Special Court, a submission was made in this regard.

8. Prima facie perusal of the record indicates the circumstances in which search was required to be taken of applicant at the spot where he was apprehended. The officer, therefore, was fully justified in undertaking search forthwith. The facts as appear from record, are sufficient to explain and justify search.

9. In this backdrop, this Court would like to deal with the submissions of learned Counsel for the Applicant that the Applicant was not orally apprised of his right of being searched in presence of a Gazetted Officer or a Magistrate and therefore, it amounts to non-compliance of provisions of Section 50 of the Act. In this regard, perusal of the record, more particularly, seizure panchanama indicates that the Applicant was duly apprised of his right under Section 50 of the Act orally as well as he was given written notice to that effect. The said panchanama is duly signed by the panchas so also the Applicant and co-accused. Thus, at

this stage, there is sufficient material on record in order hold that not only orally but also by giving written notice, the Applicant was apprised of his right under Section 50 of the act of seeking seeking search before a Gazetted Officer or a Magistrate. The said written notice indicates that the Applicant duly understood his said right however, preferred the search by police. Having regard to these facts, this Court is of the view that there is compliance of mandatory provisions of Section 50 of the Act. It is further argued that the word 'legal right' does not find place in the written notice and therefore, this amounts to non-compliance of Section 50 of the Act. To support this submission, reference is sought to be made by learned Counsel for applicant to the judgment/order of learned Single Judge of this Court in case of Abdul Wahid (supra). With utmost respect, this Court is of the view that the right of the Applicant of being searched before a Gazetted Officer or a Magistrate, if apprised to him, it will not effect compliance of Section 50 of the Act in case it is not mentioned that it is a 'legal right'. The right of a person has to be legal only. There is no question of he having any right which is not legal. Having regard to the said fact, in the instant case, there is no question of holding that it is a case of non-compliance of Section 50 of the Act.

10. Insofar as non-compliance of Section 52A is concerned, the said issue is already decided by the Hon'ble Supreme Court in case of NCB Vs. Kashif, **2024 INSC 1045** wherein it is observed thus :-

“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 ba5216-24.doc 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 ba5216-24.doc 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."

In view of the above observation, non-compliance of Section 52A of the Act would not become a ground for grant of bail.

11. The procedure adopted for search and seizure is sought to be challenged on the ground that there is no record indicating movement of brass seal. In this regard, it is necessary to take note of the fact that the NDPS Act is a special Statute intended to curb the menace of drug abuse in the society. This Act clearly provides for the safe-guards to the accused in order to ensure that he is not falsely implicated in the crime. At the same time, the Legislature has consciously omitted certain other procedure prescribed by Cr.PC. in case of search, seizure and arrest. A

due weightage must be given to the intent of the Legislature in consciously excluding those provisions and its application to the offences under NDPS Act. Section 37 of the Act mandates that before granting bail, the Court must be satisfied that the accused has not committed the crime and that he is not likely to commit the crime, if released on bail. Unless these two contingencies are met, the Court does not get a right to pass any order of bail. It is not expected from the Court to go into the evidence on record in the charge-sheet in detail, in order to find out loopholes in the case of the prosecution in order to grant bail. In considered view of this Court, only in case of non-compliance of mandatory provisions, which go to the root of the matter and which would in all probabilities lead to negation of the seizure of the contraband, small here and there infraction of the procedure, cannot be permitted to become a ground for grant of bail. Evidence with regard to the movement of brass seal etc. cannot be gone into at this stage as it would be for the accused to take such a defence in the trial and prosecution to explain the same.

12. Insofar as compliance of Section 42 of the Act is concerned, this is not a case wherein any specific intelligence was received with regard to the Applicant. As such, there was no question of reducing the same in

writing in compliance of Section 42(1) of the Act. As far as compliance of Section 42(2) of the Act is concerned, there is sufficient material on record to indicate that the immediate superiors were duly informed about the entire action taken. This Court, therefore, finds no infraction with regard to the procedure contemplated by Section 42 of the Act.

13. By relying upon the judgments in case of Pankaj Bansal (supra) and Vihaan Kumar vs. State of Haryana, **2025 SCC OnLine Sc 269** and the orders/judgments of this Court, bail is sought on the ground that the Applicant is not furnished the grounds of arrest in writing. With regard to this submission, it would be fruitful to refer to the judgment of the Hon'ble Supreme Court in case of State of Karnataka vs. Sri Darshan (supra) wherein it is observed 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 IPC 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.

14. In the present case it is not the case of applicant that he was not represented by a lawyer during remand. He no doubt made grievance of non furnishing of grounds, but the bail application is filed, fully knowing the accusatio against him. Similarly, no prejudice is shown to have have been caused to him for non providing of grounds of arrest in writing. The arrest surrender form indicates that grounds of arrest were communicated to the applicant and he duly acknowledge the same by putting signature/thumb impression thereon. Thus, there can only be said to have irregularity in furnishing grounds of arrest and on account of said lapse, applicant would not be entitled for bail.

15. In view of the position of law and facts of the case discussed above, this Court is of a considered view that there is no merit in the

application and the Applicant is not entitled to bail. In the result, application stands rejected.

(R. M. Joshi,J.)