

The pancha witnesses were called. Panchanama was drawn of the seizure of Charas weighing approximately 1 Kg. 120 gms. The accused persons came to be arrested in connection with the said crime. After completion of investigation, charge sheet is filed.

3. Learned counsel for the Applicant submits provision of seizure panchanama indicates that there are discrepancies therein in respect of the article numbers so also, name of the person, at whose instance, the said contraband was seized. It is his submission that there is also inconsistency in recording of articles and which leads to the confusion as to which contraband article seized from the different accused persons. He argued that this inconsistency goes to the root of the case and benefit of the same should go to the applicant/accused. It is submission that having regard to this fact, rigours of Section 37 of the Act have no application to the present case.

4. Learned APP opposed the application by contending that on the face of a typographical error is found in the panchanama, it could not become a ground for giving the benefit thereof to the applicant. It is submitted that on the basis of the material evidence on record, it can be seen contraband of commercial quantity was seized from the applicant. It is argued that since the recovery has been done from the bag carried

by the applicant, compliance of section 50 of the Act would not be relevant at this stage. In response to the arguments with the regard to the inconsistency in the treatment recorded in panchnama, photograph of the seized articles is shown to this Court which indicates that article No. 3 has rightly been recorded in respect of the seizure done from the present applicant.

5. At this stage, the Court is required to consider as to whether, the case of the prosecution could be *prima facie* accepted on the basis of material evidence on record. *Prima facie* perusal of record shows that on account of suspicion, the applicant and co-accused were intercepted. However, the recovery of the contraband had not been done from the person of the accused but from the bag which the accused was holding with him. Thus, this Court finds substance in the contention of Learned APP that at this stage, the Court is not required to go into the compliance of Section 50 of the Act.

6. Insofar as the alleged discrepancies in the recording of panchnama is concerned, needless to say that typographical error in any form in the panchnama would not lead to grant of the benefit thereof to the applicant. This observation is inevitable in view of the fact that there is other material on record which clearly shows the contraband was

seized at the instance of the present applicant and being recorded as article 3.

7. Learned Counsel for the applicant has also submitted that from panchnama, it can be seen that independent persons were present at the spot, were examined, however, their statements are not recorded. As far as this submission is concerned, law does not prescribe any specific number of witnesses to prove any fact. It is for the learned trial court to decide as to whether rely or not to rely upon the evidence of panch witnesses and to consider the consequence of non-recording of statements of independent witnesses, if any. This Court can not go into the said issue at this stage. Suffice to say, *prima facie* evidence on record coupled with the fact that the contraband article was seized in commercial quantity from the application, Section 37 of the Act has application in this case.

8. As a result, the bail application is *dismissed*.

[R.M. JOSHI, J.]