

Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 939 OF 2026

Swaroop Jeetendra Sawant	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondents

Ms. Ashwinii Achari, with Aryan K. Kotwal, Anish Pereira and
Taraq Sayed, for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent-State.

CORAM: R. M. JOSHI, J.

DATED: 5th MAY, 2026.

PC:-

1. The Applicant seeks bail in connection with Crime No. 949 of 2024 dated 7th September 2024 registered with Vartak Nagar Police Station, Thane City for the offences punishable under Sections 8(c), 20(B)IIA, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. In short, it is the case of the prosecution that from the present Applicant, there is a recovery of commercial quantity of LSD papers and *Ganja*. On conclusion of investigation, charge-sheet is filed.

3. Learned counsel for the Applicant, amongst other contentions, submits that herein in this case, there is non-compliance of mandatory provisions of Section 50 of the NDPS Act.

To support her submission, she drew attention of the Court to the notice dated 7th September 2024 issued to the Applicant, wherein the right of the Applicant to take his search in presence of a Gazetted Officer or a Magistrate was not communicated to him. According to her, there are number of judgments wherein it is held that non-communication of the right of the Accused to get searched amounts to non-compliance of mandatory provisions of Section 50 of the NDPS Act, and which would ultimately negates the recovery itself.

4. The learned APP opposes the Application by submitting that herein in this case, commercial quantity of LSD papers and *Ganja* have been recovered from the present Applicant and the C.A. Report confirms the said fact.

5. There cannot be any dispute made with regard to the proposition of law that compliance of the provisions of Section 50 of the NDPS Act is mandatory in nature. It would be relevant to take note of the notice issued to the Applicant.

"आपणास कळविण्यात येते की, एन.डी.पी.एस. कायदा १९८५ चे कलम ५० नुसार आपण मागणी करत असाल तर तुमची अंगझडती जवळच्या दंडाधिकारी किंवा राजपत्रित अधिकारी याचे समोर घ्यायची असेल तर आम्ही पोलीस पथक तुम्हाला त्यांचेकडे घेवून जावु शकतो."

6. *Prima facie*, perusal of the notice issued to the Applicant indicates that the right of the Accused to seek search in presence of the nearest Magistrate or Gazetted Officer has not been apprised to him. In such a case, there is non-compliance of mandatory

provisions of Section 50 of the NDPS Act, which may consequently lead to negating the recovery itself.

7. Having regard to these facts, this Court has a reason to believe that the Applicant may not have committed the crime in question. The Applicant has no criminal history behind him and as such, cannot be said that if he is enlarged on bail, he is likely to commit similar offences. Hence, following order:

ORDER

(i) The Bail Application stands allowed in connection with Crime No. 949 of 2024 dated 7th September 2024 registered with Vartak Nagar Police Station, Thane City;

(ii) The Applicant be released on bail on furnishing PR. Bond of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court;

(iii) The Applicant to attend all the dates of hearing before the Trial Court except exempted by a specific order by the Trial Court;

(iv) It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

8. The Bail Application stands disposed of.

(R. M. JOSHI, J.)