

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4792 OF 2024
WITH
INTERIM APPLICATION NO. 233 OF 2026

Oniye Ikennya Benith @ Onye Ikenna Bennth ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Ashwinii Achari, Taraq Sayeed, Anish Perira, Aryan Kotwal for
the Applicant.

Mr. Ashok S. Gawai APP for the State
Jadhwar G.S. PSI, Tulinj Police Station, Mumbai

CORAM: R. M. JOSHI, J.

P.C. : RESERVED ON 17th MARCH, 2026
PRONOUNCED ON 26th MARCH, 2026

1. The Applicant seeks bail in connection with CR No. II-834 of 2023 registered with Tulinj Police Station, Mira Bhayandar, Vasai Virar, Dist. Palghar, registered at the instance of Anti Narcotics Cell thane, for the offence punishable under Section 8(c) r/w 20(b) 21(c) and 29 of the Narcotic and Drugs Psychotropic Substances Act, 1985, (for short 'NDPS Act').

2. It is the case of the prosecution that on 25.11.2023 the officer concerned received secret information about two persons bringing psychotropic substance on 4th floor terrace at Gajanan Apartment, Nallasopara East. Accordingly, panchas were called and with permission the spot was raided. Applicant was found in the said premises along with his wife. He was given notice under Section 50 of the Act for conducting his personal search so also, search of the premises was taken. Applicant was found in possession of 119.85 grams of Mephedrone (MD), recovery was done of contraband from co-accused too. Panchanama of seizure was prepared, offence came to be registered against applicant and others. On conclusion of the investigation chargesheet came to be filed before the competent Court.

3. Learned Counsel for the applicant submits that there is non-compliance of mandatory provision of Section 50 of the Act. It is pointed out by referring to the relevant documents on record that no right of being searched in presence of Gazetted officer or Magistrate was communicated to the applicant and therefore, the recovery pursuant to such information non-communication renders illegal. The attention of the court is drawn to the written notice given to the applicant wherein there is mentioned about the applicant having a choice to seek such search, relying upon in the following judgment:

1. *Ranjan Kumar Chadha Vs.State of Himachal Pradesh, 2023 SCC Online SC 1262.*

2. Vijaysinh Chandubha Jadeja Vs. State of Gujarat (2011) 1 SCC 609.

3. Dharamveer Lekhram Sharma Vs. State of Maharashtra 2000 SCC Online Bom 604.

4. She also submits that it is not enough for the officer to tell the applicant that if he demands, he can be searched in presence of Gazetted Officer or Magistrate and thus it cannot be formed as compliance of Section 50 of the Act. Similarly, it is argued that signatures of panchas are absent on letter i.e. notice under Section 50 of the Act and this also creates doubt about the genuineness of the said record. It is her contention that this aspect goes to the root of the case and hence, the applicant is entitled to seek bail. It is further submitted that non-appraisal of right of the person before taking search under Section 50 of the Act, will render the seizure as illegal.

5. To support this submission reliance is placed on following other judgment:

1. Ashok Kumar Sharma Vs. State of Rajasthan (2013) 2 SCC 67.

2. K. Mohanan Vs. State of Kerala (2000) 10 SCC 222.

3. Kehinde Bolaji Bello Vs. The State of Maharashtra Bail Application No. 753 of 2025.

4. Abdul Wahid Abdul Razzak Memon Vs. State of Maharashtra Criminal Bail Application No. 597 of 2024 (Bom).

5. Mosin Mohammed Khan Vs. State of Maharashtra 2018 SCC Online Bom 12898.

6. *Himmatsingh Pratapsingh Rajput Vs. State of Maharashtra 2019 SCC Online Bom 5365.*

7. *Sanjay Bipin Shrof Vs. State of Maharashtra 2018 SCC Online Bom 20690.*

8. *Mohd. Suleman Abdul Khalid Shaikh Vs. The State of Maharashtra, Criminal Bail Application No. 1451 of 2018 (Bom).*

9. *Uzo Stephen Samuel Vs Union of India & Oth. Criminal Bail Application No. 1172 of 2024 (Bom)*

10. *Kenneth Mulowa Vs State of Maharashtra & Anr., Criminal Bail Application No. 3258 of 2023 (Bom).*

11. *Eze John Vs. Union of India & Anr., Criminal Bail Application No. 1754 of 2023 (Bom).*

12. *Zaid Zahir Rana Vs. The State of Maharashtra, Criminal Bail Application No. 1486 of 2023 (Bom).*

13. *Nadeem Abdul Rahim Choughule Vs. The State of Maharashtra, Criminal Bail Application No. 1801 of 2021 (Bom).*

6. Learned APP opposed the application by contending that there is *prima-facie* substantial compliance of Section 50 of the Act is admittedly in the panchanama. It is so mentioned in panchanama and so also the written notice has been given by the applicant in this regard. It is contended that once such compliance is found, applicant gets no right to seek bail in view of the embargo created by Section 37 of the Act. Apart from this, it is argued by Learned APP that here in this case applicant has no valid passport and therefore, his presence during the trial cannot be secured. It is thus contended that on this ground also applicant is not entitled for bail. Learned counsel for the applicant in response to submissions with regard to

the passport of applicant the placed reliance of order dated 24.03.2023 passed in Criminal Bail Application bearing no. 96 of 2023 by this Court in similar situation. It is contended that passing similar order would meet ends of justice.

7. There cannot be any dispute made with regard to the settled position of law that compliance of Section 50 of the Act is mandatory. Similarly substantial compliance thereof is not sufficient to meet the said requirement. *Prima-facie*, perusal of the records indicates that leave apart the word right being mentioned in the notice, the said notice indicates that a choice was given to the applicant of being searched before the Gazetted Officer or Magistrate without communicating his right to seek such search.

8. Needless to say that giving a choice is not communication / Appraisal of the right of the applicant to be searched in presence of Gazetted Officer or Magistrate. Thus, *prima-facie* here in this case the mandatory provision of Section 50 has not been complied. The law on the point of such non-compliance is fairly settled to say that the consequent seizure could also be negated.

9. In view of the above facts, this court has reason to believe that applicant might have not committed offence charged against him and is not likely to commit the same if enlarged on bail in absence of any antecedents against him. The rigors of Section 37 of the Act therefore do not apply to the present case and accused would be entitled to be released on bail.

10. Insofar as the objection of the Learned APP for enlargement of the bail for the reason that there is no valid passport of the applicant, in similar situation, in case of *Philip OBI, Vs. State, in*

Criminal Bail Application No. 96 of 2023, this Court has issued directions.

11. Having regard to the similarity in the facts as passing of similar order will take care of the apprehension of the prosecution that present application deserves to be allowed on similar lines.

12. Hence, the following Order.

- a) The applicant shall be released on bail in connection with CR No. II-834 of 2023 registered with Tulinj Police Station, registered at the instance of Anti Narcotics Cell thane, on furnishing PR bond of Rs. 1,00,000/- and producing sureties of the like amount to the satisfaction of the Trial Court.
- b) The release of the applicant shall be subject to production of valid passport and visa. Since passport and visa can be applied online, as informed by the learned Public Prosecutor, the applicant will have to apply for the same from jail. The respondent-state authorities shall provide assistance to the applicant. But it is made clear that without producing valid passport and visa, the applicant shall not be released on bail.
- c) Upon producing such valid passport and visa, the applicant shall place copies thereof before the Trial Court.
- d) The applicant shall register himself on the basis of such valid passport and visa, with the Foreigners

Regional Registration office (FRRO) at Mumbai, within two weeks of his release.

- e) The applicant shall use sim card for mobile phone that is obtained on the basis of such valid passport issues in this favour and shall give the details of such contact number before the Trial Court at the earliest.
- f) The Applicant shall inform the place of his residence to the Trial Court with valid proof thereof and report any changes in the same immediately with appropriate proof each time before the Trial Court. If the applicant fails to provide such details, he shall be kept in detention center(s) established by the respondent-state.
- g) The applicant shall file affidavit before the Trial Court within two weeks of his release on bail, stating the source of his funds and source of his income in this country, giving the details of legal channels including Bank accounts through which he would be operating his finances.
- h) The applicant shall report to the Tulinj Police Station, Mira Bhayandar, Vasai Virar, Dist. Palghar every Monday between 10:00 a.m. and 12:00 noon, till the completion of trial.
- i) The applicant shall not indulge in any activity that would amount to tampering with evidence and influencing witnesses.

- j) The applicant shall remain present before the Trial Court on each and every date of the proceeding and he shall co-operate with such proceedings.
- k) Application for bail stands disposed of.

(R. M. JOSHI, J.)