



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.872/2023

SHAFAT MAUSIN KHAN

@ SHAHRUKH KHAN

VS.

THE STATE OF MAHARASHTRA

..APPLICANT

..RESPONDENT

Adv. Rajendra Bidkar for the applicant.

Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 18, 2023.

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 8(c), 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'the NDPS Act' for short) registered on 18/11/2021 vide C.R. No.391/2021 with Shivaji Nagar Police Station.
- 3.** The original complainant namely Police Constable Mr. Subhash Ramesh Thorat Bhalerao, attached to Shivaji Nagar police station, Mumbai, lodged First Information

Report (FIR) that on 18/11/2021, a team of officers attached to Shivaji Nagar Police Station was on patrolling duty and while they were at Kamalaraman Nagar, Baingan Wadi, Govandi, Mumbai, at that time, two men were spotted with two large paper boxes. The movements of the said persons were found to be suspicious. On seeing police officers, they tried to run away, hence they were accosted. The search was carried out which resulted in the recovery of 240 bottles of BDPL Chlorpheniramine Maleate & Codeine Phosphate Syrup 100 ml (Phensirest Cough Syrup - Codeine). On inquiry, they failed to produce the requisite license and reasons as to how they are possessing the said bottles. As they were found in possession of the aforesaid contraband, the offence was registered.

4. Learned APP opposed the application for bail while submitting that the procedure under Section 42 and 50 of the NDPS Act has been complied. The applicant was found in possession of the commercial quantity and hence rigours of Section 37 of the NDPS Act are attracted. She further submitted that the panchanama was prepared in presence of two panchas.

5. A reading of the panchanama reveals that the personal search of the applicant as well as the boxes in possession of the applicant was carried out. The applicant was, therefore, given a notice under Section 50 of the NDPS Act. On the instructions of the empowered officer i.e. the Police Inspector Mr. Khatape, Police Constable Mr. Jadhav in presence of the panchas took a search of the applicant. Though nothing was found in possession on his person, on the search of the boxes the contraband was recovered.

6. The Hon'ble Supreme Court in the case of **State of Rajasthan vs. Parmanand & anr.**¹ in paragraphs 10, 11 and 12 observed thus:-

“10. In Dilip & Anr. v. State of Madhya Pradesh, on the basis of information, search of the person of the accused was conducted. Nothing was found on their person. But on search of the scooter they were riding, opium contained in plastic bag was recovered. This Court held that provisions of Section 50 might not have been required to be complied with so far as the search of the scooter is concerned, but keeping in view the fact that the person of the accused was also searched, it was obligatory on the part of the officers to comply with the said provisions, which was not done. This Court confirmed the acquittal of the accused.

11. In Union of India v. Shah Alam, heroin was first recovered from the bags carried by the respondents therein.

1 Criminal Appeal No.78/2005 decided on 28/2/2014.

Thereafter, their personal search was taken but nothing was recovered from their person. It was urged that since personal search did not lead to any recovery, there was no need to comply with the provisions of Section 50 of the NDPS Act. Following Dilip, it was held that since the provisions of Section 50 of the NDPS Act were not complied with, the High Court was right in acquitting the respondents on that ground.

12. Thus, if merely a bag carried by a person is searched without their being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

7. In the present case, Section 50 of the NDPS Act will have application. The panchanama clearly reveals that the personal search was carried out by the Police Constable Mr. Jadhav who was not the empowered officer. The empowered officer was present who instructed the Police Constable to carry out the search of the person of the applicant. There is, thus, no proper compliance of the provisions regarding search of the applicant as the search was not carried out by the empowered officer. *Prima facie*, there are reasonable grounds for believing that the applicant is not guilty of the

offence. Furthermore, there are no criminal antecedents reported against the applicant, therefore, it is unlikely that he will commit any offence in future.

8. The applicant is in custody for more than one year and eleven months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. No criminal antecedents are reported. The applicant can be enlarged on bail by imposing conditions. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Shafat Mausin Khan @ Shahrukh Khan in connection with C.R. No.391/2021 with Shivaji Nagar Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Shivaji Nagar Police Station once in a month on every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the trial concludes.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall not leave the country without prior permission of the trial Court.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

9. The application is disposed of.

(M. S. KARNIK, J.)