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

BAIL APPLICATION NO. 3149 OF 2022

Wasi Ahmad Ansari @ Chotu s/o Kamar
Ansari ... Applicant
Versus
Narcotics Control Bureau & Anr. ... Respondent

Mr. Dilip Mishra i/by Mr. Ayaz Khan for the Applicant.
Mr. Shreeram Shirsat a/w Nikhil Daga and Karishma Rajesh for
the respondent No.1-NCB.
Ms. Rutuja A. Ambekar, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 9th OCTOBER 2024**

P.C. :

. Heard learned counsel for the applicant and learned counsel
appearing for the respondent-Narcotics Control Bureau.

2. The applicant is seeking bail as he was arrested on 9th
February 2022 in connection with action taken by the Narcotics
Control Bureau (NCB), in pursuance of information received on
the same date, stating that contraband was stored in the flat of the
applicant. It is claimed that a separate information was received
subsequently by the NCB that the applicant travelling in his
vehicle was also carrying contraband. The action taken in
pursuance of such information led to arrest of the applicant and he
has remained behind bars from 9th February 2021.

3. The seizure in the present case, on the basis of the aforesaid two sets of information, is in two parts. The first part pertains to contraband in the form of 357 grams Mephedrone (MD) and 30 grams of *ganja* being recovered from the said flat and the second part of recovery is 55 grams of MD recovered from the person of the applicant when he was apprehended, while driving his vehicle.

4. In the present case, the investigation was completed and charges were framed in February 2024. The proceedings are pending trial before the Special Court. On an earlier occasion, this Court (Coram: Prithviraj K. Chavan, J.) by order dated 14th March 2024, had recorded a statement made on behalf of the NCB that trial could be concluded within 6 months. As on today, only witness summon have been issues and not a single witness has been examined. In that light, the learned counsel for the applicant is pressing for relief in the present application, in the backdrop of the fact that the applicant has suffered incarceration for a period of about 3 years and 8 months.

5. The learned counsel for the applicant submits that the recoveries on both the occasions i.e. from the flat and from the person of the applicant, are vitiated, as the documents on record would reveal that mandatory requirements of law were not satisfied. As regards the recovery of contraband from the flat, attention of this Court is invited to the *panchanama* dated 9th February 2021, executed in that context. It is submitted that the door of the flat was locked and the officials of the NCB opened

the lock ostensibly by using a second key provided by the secretary of the society, in which the flat is located. The said person was himself shown as a *panch* for execution of the said *panchanama*. It is submitted that the manner in which the aforesaid exercise was carried out, raises serious doubt about the authenticity of the claim of the NCB that the aforementioned contraband was recovered from the flat, which was leased in the name of the wife of the applicant.

6. As regards the second occasion of recovery from the person of the applicant, it was submitted that admittedly the *panchanama* executed in that regard does not record compliance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It was submitted that therefore, the said recovery also stood vitiated.

7. It was further submitted that during the course of hearing of this application on an earlier occasion, much emphasis was placed on the criminal antecedents of the family members of the applicant. It is submitted that registration of cases under the NDPS Act against the parents and the brother of the applicant, cannot be a ground to proceed against the applicant. As against the applicant, it is submitted that there is only one criminal antecedent, which pertains to the year 2021, concerning an offence under Section 324 of the Indian Penal Code, 1860 (IPC). It is indicated that the said offence is registered due to a quarrel between the applicant and one of his neighbours. It is submitted

that in this backdrop, this Court may positively consider the prayer made in the present application.

8. Reliance was placed on orders passed by this Court in similar circumstances, where it was found that mandatory provision of Section 50 of the NDPS Act was not complied with. These included order dated 10th April 2024 passed in Bail Application No. 4467 of 2021 (*Kerry Kelvin Mendes v/s. The Union of India & Anr.*) and order dated 4th April 2024 passed in Bail Application No. 1754 of 2023 (*Eze John v/s. Union of India & Anr.*). Reference was also made to judgment of the Supreme Court in the case of *Ranjan Kumar Chadha v/s. State of Himachal Pradesh, 2023 SCC OnLine SC 1262*, to contend that in the said judgment it has been nowhere stated that compliance under Section 50 of the NDPS Act is not necessary where the accused voluntarily takes out contraband from his own person. It was submitted that the contention raised in that regard on behalf of the respondent-NCB is misplaced.

9. On the other hand, the learned counsel for the respondent-NCB has vehemently opposed the prayer made in the present application. He emphasized upon objects of the NDPS Act and the observations made by the Supreme Court in the above referred judgment in the case of *Ranjan Kumar Chadha* (supra), highlighting the fact that drug abuse is a social malady and that accused persons, who indulge in such nefarious activities, ought not to go scot-free on technical pleas.

10. Thereupon, the learned counsel for the respondent-NCB submitted that both the *panchanams* concerning recovery in the present case, indicate that all the mandatory requirements of law were satisfied. The secretary of the society, in which the flat is located, was available as an independent witness and since he had the second key of the flat, it was utilized to open the flat and recovery was properly made in the facts and circumstances of the present case. As regards the recovery from the person of the applicant, it was submitted that the *panchanama* reveals that the applicant voluntarily took out contraband MD from the pocket of his pant. Therefore, there was no necessity for the officials of the NCB to make the applicant aware about his right under Section 50 of the NDPS Act. It was submitted that in such circumstances, where the charges are already framed, this Court may direct the trial to be expedited, rather than showing any indulgence to the applicant.

11. This Court has considered the material on record in the light of the rival submissions. In the present case, it is alleged that commercial quantity of contraband MD was recovered from the flat as well as from the person of the applicant on the very same date i.e. 9th February 2021, in two separate exercises carried out by officials of the NCB. Two separate information notes were received, on the basis of which the officials of the NCB proceeded, firstly to open the flat of the applicant for search and seizure and thereafter, the applicant was apprehended to search his person and

his vehicle. Both the exercises led to the aforementioned recoveries. This Court has considered the *panchanamas* executed in respect of both the recoveries. As regards *panchanama* concerning recovery from the flat, this Court finds that the officials of the NCB reached the flat and found that the door was locked. It appears providential that the secretary of the society, in which the flat is located, presented himself before the officials of the NCB and that he was shown as an independent *panch* witness. Not only this, the aforesaid secretary of the society was carrying the second key of the aforesaid flat, which was promptly utilized by the officials of the NCB to open the door and to enter the flat, wherein contraband was allegedly found stored in the refrigerator. This Court is of the opinion that the applicant has indeed made out a *prima facie* case in his favour to raise serious suspicion about the manner in which the whole exercise was carried out by the officials of the NCB. This Court is of the opinion that recovery of contraband in such a manner, whereby the door of the flat was opened using a second key, provided by the secretary of the society, where the flat was located, is a factor that inures to the benefit of the applicant and it creates a serious doubt about the recovery of contraband from the said flat.

12. As regards recovery from the person of the applicant, it is an admitted position that there is nothing on record to show that the mandatory requirement under Section 50 of the NDPS Act was satisfied. The *panchanama* as regards the aforesaid recovery, when

read closely, shows that according to the officials of the NCB, when the applicant travelling in his car was confronted and he was shown the identity card by the officials of the NCB, informing him that his car and his person would be searched, the applicant himself took out contraband i.e. 55 grams of MD from his pocket and handed it over to the officials of the NCB. This Court finds the aforesaid narration *prima facie* raises suspicion about the manner in which the recovery was made.

13. The moment the official of the NCB showed his identity card and told the applicant about his intention to search the person of the applicant as well as the vehicle, it was incumbent upon the said official under Section 50 of the NDPS Act, to inform the applicant about his right to be searched in the presence of a Gazetted Officer or Magistrate. The said requirement could not have been circumvented by simply stating that the applicant voluntarily took out the aforesaid contraband from his pocket and handed it over to the officials of the NCB. If the contention raised on behalf of the NCB is accepted, this would be the surest way of circumventing the mandatory requirement under Section 50 of the NDPS Act. Therefore, this Court finds that on this score also the applicant has made out a *prima facie* case in his favour to indicate that the recovery is rendered seriously doubtful due to non-compliance of mandatory requirement of Section 50 of the NDPS Act.

14. As regards the contention raised on behalf of the

respondent-NCB that the technical pleas ought not to inure to the benefit of the accused, as nefarious activity of drug abuse has to be controlled, it is to be noted that the aforesaid mandatory requirements are incorporated in the NDPS Act itself, precisely to ensure that the powers exercised by the officials of the NCB are exercised in such a manner that rights of individuals are not trampled. This is because the powers available with the officials of the NCB under the provisions of the NDPS Act would become draconian, but for such mandatory requirements being incorporated in the said Act itself. Therefore, it cannot be said that the applicant in the present case, has raised “technical pleas” to claim relief in the present case.

15. As regards the criminal antecedent of the applicant, it pertains to an offence under Section 324 of the IPC registered in the year 2021, which appears to be based on a quarrel between the applicant and his neighbour. The said criminal antecedent ought not to detain this Court from granting relief to the applicant, who has made out a case in his favour on merits. The rigors of Section 37 of the NDPS Act are satisfied by the applicant in the facts and circumstances of the present case. The fact that the parents and brother of the applicant are facing prosecution for offences under NDPS Act, cannot be a ground to deny relief to the applicant, as he has made out a case in his favour.

16. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR bearing No. NCB/MZU/CR-13/2021 pending as NDPS Spl. Case No. 590 of 2021, on furnishing P.R. Bond of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall report to the office of NCB, Mumbai Zonal Unit, Mumbai, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The applicant shall attend the trial Court on each and every date, unless specifically exempted by the trial Court.
- (c) The applicant shall surrender his original passport before the trial Court, within one week, upon being released on bail.
- (d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (e) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

17. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be

cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The application is disposed of.

MANISH PITALE, J.