

IN THE COURT OF DISTRICT JUDGE AND ADDITIONAL SESSIONS
JUDGE-1, PANVEL-RAIGAD, AT : PANVEL
ORDER BELOW EXHIBIT 4 IN SPECIAL NDPS CASE NO.245/2023
(DATED 15/01/2025)
CNR NO.MHRG170023702023

- 1] Applicant/accused No.5 Arinze Fidelis Chinedu is seeking bail in C.R.No. 311/2023 registered with Kharghar police station for the offence p/u/sec.8(c) and 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, u/sec.3(A), 6(A), of Passport Act and u/sec.14(A), 14(B) of Foreigners Act 1946.
- 2] According to prosecution on 01/09/2023 at 17.30 hours at Chaudhary Elite building, Sec.27, Kharghar, accused No.1 was found possessing 161 gms Cocaine, accused No.3 was found possessing 81 gms MD, accused No.4 was found possessing Tramadol Hydrochloride tablets, accused No.7 was also found possessing same tablets. Crime bearing C.R.No. 311/2023 was registered for the offences under NDPS Act, Foreigners Act and Passport Act.
- 3] Applicant/accused submit that, incidence as stated had not occurred at all. Accused has no connection with regard to seizure of alleged contraband. Accused have no criminal antecedents. Accused is ready to abide all conditions and he pray for grant of bail.

4] Heard Ld.Adv.Smt Milka Gharat and Ld.APP Shri Bhopi.

5] Ld.Adv.for accused relied on following decisions

1. *Uzo Stephan Samuel Vs. Union of India and others Criminal Bail Application No.1172/2024 High Court of Bombay* In this decision there was non-compliance of Section 50 (1) of NDPS Act. Law is laid down that, '*object of Section 50 (1) is safeguard of the right conferred, check on misuse of power and to avoid harm to innocent persons and to minimize the allegation of planting or foisting of false cases by law enforcement agencies*'.
2. *Nadeem Abdul Rahim Choughule Vs. State of Maharashtra Bail Application No.1801/2021 High Court Bombay* In this decision again Hon'ble Parent High Court laid down law regarding mandate of Section 50.
3. *C. Ali Vs. State of Kerla 1999 Legal Eagle (SC) 805 Gojuris (SC) 805* In this decision Hon'ble Apex Court has laid down a law that, '*person to be searched under NDPS Act, 1985 is required to be told about his right under section 50, before he is searched and that is mandatory requirement. No presumption to that effect can be raised*'.
4. *Rajani Kumar Chadha Vs. State of Himachal Pradesh Criminal Appeal No.2239 2240/2011 Supreme Court of India* In this decision Hon'ble Apex Court has laid down law regarding Section 50 of NDPS Act. '*In this case the recovery was from a bag. In such cases compliance of Section 50 is not required. But when recovery of contraband from the possession of accused, mandate of Section 50 has to be complied*'.

6] In backdrop of these guidelines and law laid down if fact of the present matter is considered then FIR speaks about recovery of the contraband from the possession of accused persons. Investigating officer Raju Shejwal Sr. PI has filed affidavit at Exh.16. According to him notice u/sec. 50 was given to all the accused but inadvertently it is mentioned in the panchanama that, notice was given after recovery of contraband, according to him this was typing mistake.

7] In the present case investigating officer was asked to show the compliance of Section 50 of NDPS Act. After this above affidavit was filed. According to IO it was typing mistake. Thereafter I had passed specific order and directed IO to produce case diary, station diary entries and substantiate his plea that, it was inadvertent mistake. In spite of repeated opportunities investigating officer did not produce any record. Prima facie the affidavit filed by IO is without a documentary proof. Not only this, contents of this affidavit are falsely stated by IO.

8] Hon'ble Apex Court and Hon'ble Parent High Court had laid down the objection of Section 50 of NDPS Act. When there is non-compliance of Section 50(1) of NDPS Act, prima facie allegations that, contraband was found in possession of accused persons, is false. The accused persons ought to have been searched in presence of nearest Gazetted Officer or a Magistrate. As these compliance are not made, there is reasonable ground to believe that, the contraband drug was not found in possession of

the applicants/accused persons. Applicant/accused has no criminal antecedents. Applicant/accused is entitled to be enlarged on bail. With these observations I pass following order.

ORDER

1. Application Exh.10 is allowed.
2. Applicant/accused No.5 Arinze Fidelis Chinedu in C.R.No.311/2023 registered with Kharghar police station for the offence p/u/sec.8(c) and 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, u/sec.3(A), 6(A), of Passport Act and u/sec.14(A), 14(B) of Foreigners Act 1946 be released on PB and SB of Rs.50,000/-. If applicant/accused is unable to furnish surety, he is permitted to deposit Rs.50,000/- as cash security.
3. Applicant/accused shall not directly or indirectly induce or threat prosecution witnesses and evidence.
4. Applicant/accused shall attend concerned police station on third Saturday of month in between 10.00 a.m. to 01.00 p.m.
5. Compliance of bail before this Court.
6. Inform concerned police station.
7. Copy of the order be sent to the concerned jail authorities through E-mail.

Panvel
Date :-15/01/2025

(Jairaj D.Wadne)
Additional Sessions Judge,
Panvel-Raigad

I affirm that the contents of this PD.F file order are same, word to word, as per the original order.

Name of the stenographer	: S.J.Sheth
Name of the Court	: Additional Sessions Judge, Panvel Raigad
Dictation given on (direct)	: 15/01/2025
Order signed by the P.O.on	: 15/01/2025
Order uploaded on	: 16/01/2025