



NDPS SPECIAL CASE NO.259/2023

(CNR No. : MHPU010057952023)

**Inspector of Customs Narcotic Cell
Vs.**

Eric Cyril Chinedu

ORDER BELOW EXH.4

This applicant/accused, **Eric Cyril Chinedu** moved this bail application under Section 439 of the Cr.P.C. to enlarge him on regular bail, in connection with Crime No.404/2022 registered under Sections 8(C), 20(c) of The Narcotic Drugs and Psychotropic Substances (NDPS) Act, with Police Station, Customs, Pune.

2. It is the prosecution case that on 21/09/2022, the complainant Yogesh Namdeo Mandhare police constable alongwith other police staff were on patrolling duty. When they reached near the Gyanam School, they were proceeding through by walk, they noticed one foreigner standing there and all activities of that person are suspicious. Therefore the police kept watch on him. After noticing to police he was about to leave that place. The police suspected that some articles might be with him. Therefore Police Inspector Sunil Thopte and other police staff caught that foreigner and introduced themselves with him in english language. On inquiry the accused told his name as Eric Cyril Chinedu, resident of Nigeria. He was not having passport and visa with him. The police suspected that something

suspicious may be in his possession. Therefore immediately the police called two persons proceeding on the street namely Prajwal Rohidas Dhamdhere and Amol Ankush Bibwe. The police informed them that they want to take personal search of this foreigner and requested to act as pancha and accordingly they shown their readiness. Then police introduced all the persons to Eric Cyril Chinedu and police informed him in english language that *“you are hereby intimated that we have suspicion that you have some Narcotic drug in your possession, therefore we want to take your personal search. According to Section 50 (1) of NDPS Act, you have a right to give your personal search in presence of a gazetted officer or Magistrate. If you require we may take you to the nearest gazetted officer or Magistrate.”* Then the accused told that *“I am Eric Cyril Chinedu I have received your notice, I read it and understood the matter of the notice. I do not want to be searched in the presence of a gazetted officer / Magistrate. The police can take my personal search.”* Thereafter the police took his personal search and found one transparent polythene bag having white and brownish crystal powder in it. On inquiry he told that it is Mephedrone. He told that he had brought it for sale. Thereafter the police took out two samples of 5 gram each and forwarded it for Chemical Analysis and police lodged the complaint against the accused.

3. The accused moved this application for bail on the grounds that accused is innocent and he has not committed any

crime. Notice under Section 50(1) of NDPS Act was not proper and legal. The sample is not collected as per standing guidelines. The search and seizure was done by police which is violation of the procedure. The application for drawing of sample and certification was made after 24 days of the seizure. There is delay of 42 days. The inventory was not done in time. The prosecution case is self-contradictory, therefore Section 37 of NDPS Act will not be applicable in this case. The applicant is ready to abide by the conditions. Hence he may be released on the bail.

4. The prosecution resisted the bail application on the grounds that the accused found in possession of the contraband substance. The offence is punishable for 10 years. The accused belongs to Nigerian country. Earlier one offence is registered against the accused wherein he was found in possession of Koken. The accused is involved in supplying Narcotic drugs. If the accused released on the bail, there is possibility of tampering of evidence and of his absconding. Hence bail may be rejected.

5. Heard learned advocate for the accused. He submitted that the accused belongs to foreign nationality. During 19/09/2022 to 22/09/2022 he was illegally detained. No personal search carried out by observing mandatory provision under the NDPS Act. Seizure memo not done at the spot. As per standing order empowered officer has not signed the papers.

Charge-sheet is filed. Nothing remained to be seized. There is delay of 24 days as per section 52A (2) of NDPS Act, it is fatal to the prosecution case. No mephedrone detected in the laboratory. But other contraband was detected. Since 10 months the accused is behind bar. Hence he may be released.

6. Learned APP for the State submitted that contraband articles was detected. One more offence is registered against accused wherein he was found in possession of Koken. The prosecution has applied mandatory provision under Section 50 of NDPS Act. The accused has given consent to took his personal search. Inventory cannot be mixed in the investigation. All compliance has been made. The applicant is Nijarian. If he is released on the bail, there is possibility that he will flee away. Hence bail may be rejected.

7. Learned advocate for the applicant has relied upon following case laws :

- a) ***Kashif Vs. Narcotics Control Bureau in Bail Application No.253/2023 dated 18th May 2023 Hon'ble Delhi High Court***
- b) ***Aditya Kumar Vs. Union of India in Bail Application No. 42918 of 2021 dated 13th September 2022 Hon'ble Allahabad High Court***
- c) ***Sri Sandeep Reddy Vs. State of Karnataka in Criminal Petition No.5740 of 2022 dated 1st day of September 2022 of Hon'ble Karnataka High Court.***
- d) ***Sartori Livio Vs. State 2005 CJ (Del) 1024 by Hon'ble Delhi High Court***

8. I have gone through the application, say and documents on record i.e. charge-sheet.

9. According to the prosecution the accused found in possession of 51 gram mephedrone and I have to consider points raised by the accused regarding mandatory compliance under the NDPS Act. First of all regarding Section 50 of NDPS Act, said Section speaks as follows :

50. Conditions under which search of persons shall be conducted

(1) When any officer duly authorized under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) if such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorized under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974)

(6) After a search is conducted sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his immediate official superior.

10. On going through the charge-sheet it appears that there is copy of notice produced on record under Section 50 (1) of NDPS Act wherein it is informed to the accused that he has right to given his personal search before Magistrate or Gazetted officer if he requires, to which he has given reply that he got notice and understood the meaning of notice and allowed the police for taking personal search. Therefore I do not agree with the submission of learned advocate for the accused that the prosecution has not complied with the mandatory provisions under Section 50 (1) of NDPS Act. Prima facie it appears that the prosecution has complied. Further the inventory is produced on record wherein it is found that Magistrate has taken the inventory of the seized article and found more than 50 grams contraband substance and he has certified as per Section 52 (a) (3) of the NDPS Act. Therefore prima-facie it appears that the prosecution has complied mandatory compliance. Moreover Chemical Analysis report on record shows that the substance seized from the accused contends Methamphetamine which is prohibited or contraband under the NDPS Act. Therefore prima-facie I found case against the accused. No doubt the accused placed his reliance upon above cited rulings, I have gone through the same. The facts and circumstances in cited case laws and in case at hand are different. Moreover at prima-facie it is clear that there is case against the accused, therefore in my view these citations are not helpful to the accused.

11. Considering the above circumstances and further considering the fact that the applicant belongs to Nigerian Nationality. Therefore if he released on the bail, there is possibility of his absconding. Further another crime under NDPS Act is pending against him. No doubt there is no criteria to reject the bail application on that ground but considering the circumstances in this case and nature of the offence and involvement of the accused in similar type of offence, prima-facie I do not found case to grant him bail at this stage. The prosecution is ready to proceed with the matter. Therefore there is possibility that the matter will be proceed in the near future. The charge-sheet is on record. Thus considering all these circumstances, application is liable to be rejected. Thus I pass following order :

ORDER

1. The application (Exh.4) is rejected.
2. Intimate to the Jail authority accordingly.

Pune.
Date : 14/09/2023.

[V. R. Kachare]
Special Judge [Under NDPS Act] &
Additional Sessions Judge, Pune

CERTIFICATE

I affirm that the contents of this P. D. F. file Order are same word for word as per original Order.

Name of the Court	:-	Shri. V. R. Kachare Special Judge [Under NDPS Act] & Additional Sessions Judge, Pune
Name of the Steno	:-	Mrs. B.J. Khandre Stenographer (Grade-I)
Date of Order	:-	14/09/2023
Order signed by presiding officer on	:-	16/09/2023
Order uploaded on	:-	16/09/2023