A.F.R.

Court No. - 84

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29318 of 2022

Applicant :- Neelam Devi
Opposite Party :- State of U.P.
Counsel for Applicant :- Vivek Sharma
Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Vivek Sharma, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned A.G.A. for the State.

2. The instant bail applicant has been moved on behalf of applicant to release him on bail during trial in Case Crime No. 608 of 2022 under Section 21/22 of NDPS Act, Police Station- Highway, District- Mathura.

3. According to the prosecution case on 3.6.2022 at about 10:29 A.M. from the possession of the applicant 240 gms. of Alprazolam powder was recovered.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and nothing incriminating has been recovered from the possession of applicant.

4.1 He next submitted that even at the time of search and recovery mandatory provisions of Section 50 of NDPS Act have not been complied.

4.2. He submits, although from the perusal of the recovery memo, it appears that an option was given to the applicant that if she wants, she may give her search either before a Gazetted Officer or a Magistrate but in fact no such option was ever given to the applicant and only with intention to show the compliance of Section 50 of NDPS Act, it has been noted in the recovery memo.

4.3 He further submits, even in view of the judgment of Apex Court passed in case of Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018 AIR (SC) 2123 no compliance of Section 50 of NDPS Act at the time of search was made as indisputedly applicant did not either produce before Magistrate or Gazetted Officer and her search was made by the police personnel at alleged spot of recovery.

4.4. Learned counsel for the applicant urged that in view of the law laid down in case of Arif Khan (Supra), it was imperative for searching officer to produce applicant before a Magistrate or Gazetted Officer which is not done in the present matter and, therefore, considering the fact that mandatory provisions of Section 50 of NDPS Act have not been complied with entire recovery vitiates.

4.5. Learned counsel also placed reliance on the judgement and order passed by this court in Criminal Misc. Bail Application No. 27291 of 2020 Mohd. Asageer Vs. NCB.

4.6. Learned counsel for the applicant further submits, applicant is a lady and she is not having any criminal history and she is in jail in the present matter since 03.06.2022 i.e. for last more than six months and, therefore, considering the facts and circumstances of the case and detention of applicant she should be released on bail.

5. Per contra, learned A.G.A opposed the prayer for bail and submits that from the possession of the applicant 240 gms. of Alprazolam powder was recovered which involves commercial quantity as commercial quantity of Alprazolam powder is only 100 gms.

6. Learned A.G.A further submits that before search an option was given to the applicant that if she wants then she may be searched either before a Magistrate or a Gazetted Officer and from the perusal of the recovery memo it further reflects that it was also stated to her (applicant) that it is her right but in spite of the option given to her, she did not opt to be

searched either before a Magistrate or a Gazetted Officer and she stated that she may be searched by the Searching Officer and thereafter her search was made by two female police constables and therefore, from the perusal of the recovery memo dated 03.06.2022 it appears that provisions of Section 50 of NDPS Act have been duly complied with in its letter and spirit and, therefore, considering the non obstante clause of Section 37 of NDPS Act, applicant should not be released on bail.

7. I have heard both the parties and perused the record of the case.

8. Indisputedly, from the possession of the applicant commercial quantity of Alprazolam powder (240 gms) was recovered.

9. Section 37 of the NDPS Act regulates the bail involving commercial quantity and runs as under:

> *"**37. Offences to be cognizable and non-bailable-***
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-*
>
> > *I. the Public Prosecutor has been given an opportunity to oppose the application for such release and,*
> >
> > *II. where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
>
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."*

10. Therefore, as per Section 37 of NDPS Act no person accused for offences under NDPS Act involving commercial quantity shall be released on bail unless:

(a) Public prosecutor has been given an opportunity to oppose the bail application,

(b) The Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence,

(c) He is not likely to commit any offence while on bail.

11. Therefore, from perusal of the Section 37 of the NDPS Act it appears that bail can only be granted to an accused involving commercial quantity when there is a reasonable ground that he is not guilty and he will not commit any offence after released on bail.

12. Learned counsel for the applicant with regard to the condition "(b)"of Section 37 of NDPS Act submitted that as mandatory provisions of Section 50 have not been complied at the time of search, therefore, there is reason to believe that he is not guilty as Section 50 of NDPS Act is mandatory and its non-compliance will be resulted in the acquittal of applicant. To analyze the argument advanced by learned counsel for the applicant, it is necessary to refer Section 50 of NDPS Act which is extracted below:

> *"**50. Conditions under which search of persons shall be conducted-***
>
> *1. When any officer duly authorised 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 authorised 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 under 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."

13. From the perusal of Section 50 of the NDPS Act it appears that according to the Section 50 (1) of NDPS Act the officer authorized to search shall, if such person so requires, to take such person to nearest Gazetted Officer of any department mention in Section 42 of NDPS Act or to the nearest Magistrate, therefore, as per Section 50 of NDPS Act, if an accused person opted to be searched either before a Gazetted Officer or a Magistrate then it is imperative on the part of Searching Officer to take him before such Officer but if even after giving option the accused did not opt to be searched either before a Magistrate or a Gazetted Officer then he can make a search himself without taking the accused either before a Magistrate or a Gazetted Officer.

14. The Constitution Bench of the Apex Court in case of Vijaysinh Chandubha Jadeja Vs. State of Gujarat (2011) 1 SCC 609 after discussing the judgment of another Constitution Bench of the Supreme Court in case of State of Punjab Vs. Baldev Singh (1999) 6 SCC 172 observed as follows with regard to provisions of Section 50 of NDPS Act:

"23. In the above background, we shall now advert to the controversy at hand. For this purpose, it would be necessary to recapitulate the conclusions, arrived at by the Constitution Bench in Baldev Singh case (supra). We are concerned with the following conclusions:(SCC pp. 208-10, Para 57).

"(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest

Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search."

24. Although the Constitution Bench in Baldev Singh case did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said

right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

25. As noted above, sub-sections (5) and (6) were inserted in Section 50 by Act 9 of 2001. It is pertinent to note that although by the insertion of the said two sub-sections, the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned in the sub-sections, viz. when the authorised officer has reason to believe that any delay in search of the person is fraught with the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance etc., or article or document, he may proceed to search the person instead of taking him to the nearest gazetted officer or Magistrate. However, even in such cases a safeguard against any arbitrary use of power has been provided under sub-section (6). Under the said sub-section, the empowered officer is obliged to send a copy of the reasons, so recorded, to his immediate official superior within seventy two hours of the search. In our opinion, the insertion of these two sub-sections does not obliterates the mandate of sub-section (1) of Section 50 to inform the person, to be searched, of his right to be taken before a gazetted officer or a Magistrate.

26. The object and the effect of insertion of sub-sections (5) and (6) were considered by a Constitution Bench of this Court, of which one of us (D.K. Jain, J.) was a member, in Karnail Singh Vs. State of Haryana13. Although in the said decision the Court did observe that by virtue of insertion of sub-sections (5) and (6), the mandate given in Baldev Singh case (supra) is diluted but the Court also opined that it cannot be said that by the said insertion, the protection or safeguards given to the suspect have been taken away completely. The Court observed : (Karnail Singh case13, SCC p. 553, para 31)

"31. ...Through this amendment the strict procedural requirement as mandated by Baldev Singh case was avoided as relaxation and fixing of the reasonable time to send the record to the superior official as well as exercise of Section 100 Cr.P.C. was included by the legislature. The effect conferred upon the previously mandated strict compliance with Section

50 by Baldev Singh case was that the procedural requirements which may have handicapped an emergency requirement of search and seizure and give the suspect a chance to escape were made directory based on the reasonableness of such emergency situation. Though it cannot be said that the protection or safeguard given to the suspects have been taken away completely but certain flexibility in the procedural norms were adopted only to balance an urgent situation. As a consequence the mandate given in Baldev Singh case is diluted."

27. It can, thus, be seen that apart from the fact that in Karnail Singh, the issue was regarding the scope and applicability of Section 42 of the NDPS Act in the matter of conducting search, seizure and arrest without warrant or authorisation, the said decision does not depart from the dictum laid down in Baldev Singh case insofar as the obligation of the empowered officer to inform the suspect of his right enshrined in sub-section (1) of Section 50 of the NDPS Act is concerned. It is also plain from the said paragraph that the flexibility in procedural requirements in terms of the two newly inserted sub-sections can be resorted to only in emergent and urgent situations, contemplated in the provision, and not as a matter of course. Additionally, sub- section (6) of Section 50 of the NDPS Act makes it imperative and obligatory on the authorised officer to send a copy of the reasons recorded by him for his belief in terms of sub-section (5), to his immediate superior officer, within the stipulated time, which exercise would again be subjected to judicial scrutiny during the course of trial.

28. We shall now deal with the two decisions, referred to in the referral order, wherein "substantial compliance" with the requirement embodied in Section 50 of the NDPS Act has been held to be sufficient. In Prabha Shankar Dubey, a two Judge bench of this Court culled out the ratio of Baldev Singh case, on the issue before us, as follows: (Prabha Shankar Dubey case, SCC p. 64, para 11)

"11. ...What the officer concerned is required to do is to convey about the choice the accused has. The accused (suspect) has to be told in a way that he becomes aware that the choice is his and not of the officer concerned, even though there is no specific form. The use of the word "right" at relevant places in the decision of Baldev Singh case seems to be to lay effective emphasis that it is not by the grace of the officer the choice has to be given but more by way of a right in the "suspect" at that stage to be given such a choice and the inevitable consequences that have to follow by transgressing it."

However, while gauging whether or not the stated requirements of Section 50 had been met on facts of that case, finding similarity in the nature of evidence on this aspect between the case at hand and Joseph Fernandez, the Court chose to follow the views echoed in the latter case, wherein it was held that searching officer's information to the suspect to

the effect that "if you wish you may be searched in the presence of a gazetted officer or a Magistrate" was in substantial compliance with the requirement of Section 50 of the NDPS Act. Nevertheless, the Court indicated the reason for use of expression "substantial compliance" in the following words: (Prabha Shankar Dubey case2, SCC p. 64, para 12)

> *"12. The use of the expression "substantial compliance" was made in the background that the searching officer had Section 50 in mind and it was unaided by the interpretation placed on it by the Constitution Bench in Baldev Singh case. A line or a word in a judgment cannot be read in isolation or as if interpreting a statutory provision, to impute a different meaning to the observations."*

It is manifest from the afore-extracted paragraph that Joseph Fernandez does not notice the ratio of Baldev Singh and in Prabha Shankar Dubey, Joseph Fernandez is followed ignoring the dictum laid down in Baldev Singh case.

29. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision."

15. Therefore, from the judgement of the Apex Court passed in case of Vijaysinh Chandubha Jadeja (supra), it is apparent that provisions of Section 50 of the NDPS Act are mandatory and it is the duty of empowered officer to apprise the accused that he is having right to be searched either before a Magistrate or a Gazetted Officer and if no such option is given to the accused then entire recovery would be vitiated but from the perusal of the provisions of Section 50 of NDPS Act as well as

from the judgements of Constitutional Benches of Apex Court in cases of Baldev Singh (supra) and Vijaysinh Chandubha Jadeja (supra), it is also clear that if in spite of appraising the right of accused he/she did not choose either to be searched before a Magistrate or a Gazetted Officer then search may be taken by the empowered officer and it is not imperative on his part to take the accused either before a Magistrate or a Gazetted Officer.

16. The similar issue arose before Delhi High Court and in light of the judgement of Arif Khan (supra), learned single Judge referred the matter to larger bench and Division Bench of the High Court of Delhi in case of Nabi Alam Vs. State (Govt. of NCT of Delhi) MANU/DE/1045/2021 after analyzing the judgement of Vijaysinh Chandubha Jadeja (supra) and Baldev Singh (supra) observed as under:

> *"20. On a plain reading of the above decision, it is clear that the obligation of the empowered officer under sub-Section (1) of Section 50 of the NDPS Act makes it imperative on his part to apprise the person intended to be searched, of his right to be searched before a Gazetted Officer or Magistrate; failure to comply with which prescription, which requires strict compliance, would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person accused during such search or suspected of being in possession of any narcotic drug or psychotropic substance during the said search. However, for the purposes of the issue to be determined in the instant case, it is relevant and pertinent to note that the Constitution Bench of the Hon'ble Supreme Court of India in Vijaysinh Chandubha Jadeja (supra) clearly observed that "Thereafter, the suspect may or may not choose to exercise the right provided to him under the said proviso". The sequitur to this observation of the Supreme Court leaves no manner of doubt that once the suspect has been apprised by the empowered officer of his right to be searched before a Gazetted Officer or a Magistrate, but chooses not to exercise that right, the empowered officer can conduct the search of such person without producing him before a Gazetted Officer or a Magistrate, for the said purpose.*
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> *21. Coming now to the emphasis placed on behalf of the applicant/accused on the judgment rendered by the Supreme Court in Arif Khan @ Agha Khan (supra), the question that needs to be considered is whether that decision is an authority for the proposition*

that notwithstanding the person proposed to be searched has, after being duly apprised of his right to be searched before a Gazetted Officer or Magistrate, but has expressly waived this right in clear and unequivocal terms; it is still mandatory that his search be conducted only before a Gazetted Officer or Magistrate.

22. In this behalf, it is necessary to consider the observations of the Hon'ble Supreme Court in Arif Khan @ Agha Khan (supra), the relevant paragraphs of which decision are being extracted hereinbelow:

> *"18. What is the true scope and object of Section 50 of the NDPS Act, what are the duties, obligation and the powers conferred on the authorities under Section 50 and whether the compliance of requirements of Section 50 are mandatory or directory, remain no more res integra and are now settled by the two decisions of the Constitution Bench of this Court in State of Punjab v.Baldev Singh [State of Punjab v. Baldev Singh, MANU/SC/0981/1999 : (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] and Vijaysinh Chandubha Jadeja [Vijaysinh Chandubha Jadeja v. State of Gujarat, MANU/SC/0913/2010 : (2011) 1 SCC 609] .*
>
> *19. Indeed, the latter Constitution Bench decision rendered in Vijaysinh Chandubha Jadeja (supra) has settled the aforementioned questions after taking into considerations all previous case law on the subject.*

20. Their Lordships have held in Vijaysinh Chandubha Jadeja that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the police officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorised officer to make the suspect aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a gazetted officer or a Magistrate."

23. A plain reading of the above extracted paragraphs leads to but one inescapable conclusion that their Lordships of the Hon'ble Supreme Court whilst following the ratio of the decision of the Constitution Bench in Vijaysinh Chandubha Jadeja (supra) held that the same has settled the position of law in this behalf to the effect that, whilst it is imperative on the part of the empowered officer to apprise the person of his right to be searched only before a Gazetted Officer or Magistrate; and this requires

a strict compliance; the Hon'ble Court simultaneously proceeded to reiterate that, in Vijaysinh Chandubha Jadeja (supra) "it is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act". In this view of the matter, the reliance placed by counsel for the applicant/accused on the decision of the Supreme Court in Arif Khan @ Agha Khan (supra), in our respectful view does not come to his aid.

24. Having considered the case law on the subject, we are inclined to answer the Reference in the following manner.

25. In view of the discussion in the foregoing paragraphs, we answer the issue that arises for consideration in the present Reference in the negative.

26. For the sake of clarity it is held that, axiomatically, there is no requirement to conduct the search of the person, suspected to be in possession of a narcotic drug or a psychotropic substance, only in the presence of a Gazetted Officer or Magistrate, if the person proposed to be searched, after being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistate categorically waives such right by electing to be searched by the empowered officer. The words "if such person so requires", as used in Section 50(1) of the NDPS Act would be rendered otiose, if the person proposed to be searched would still be required to be searched only before a Gazetted Officer or Magistrate, despite having expressly waived "such requisition", as mentioned in the opening sentence of sub-Section (2) of Section 50 of the NDPS Act. In other words, the person to be searched is mandatorily required to be taken by the empowered officer, for the conduct of the proposed search before a Gazetted Officer or Magistrate, only "if he so requires", upon being informed of the existence of his right to be searched before a Gazetted Officer or Magistrate and not if he waives his right to be so searched voluntarily, and chooses not to exercise the right provided to him under Section 50 of the NDPS Act."

17. Therefore, although in the case of Arif Khan (supra) Hon'ble Apex Court held that it was imperative on part of Searching Officer to take the accused either before a Magistrate or a Gazetted Officer and his search ought to have been made before a Magistrate or a Gazetted Officer, in spite of the fact that he waived his right to be searched either before a Magistrate or a Gazetted Officer but in light of the Judgement of the Constitution Bench of Apex Court in case of Vijaysinh Chandubha Jadeja

(supra) no benefit can be extended in favour of applicant in view of the observation made in case of Arif Khan (supra).

18. As in case at hand, from the possession of the applicant 240 gms. of Alprazolam powder was recovered which is more than commercial quantity and before taking search empowered officer apprised her that she is having right to be searched either before a Magistrate or a Gazetted Officer but in spite of that she (applicant) did not opt to be searched either before a Magistrate or a Gazetted Officer and with her consent her search was made by two female police constables therefore, in view of the law laid down in the judgment of Constitution Bench of Apex Court in case of Vijaysinh Chandubha Jadeja (supra) empowered officer has complied the provisions of Section 50 of NDPS Act and it cannot be said that there is a violation of Section 50 of NDPS Act.

19. Further, at the stage of bail it is only to see that whether prima facie provisions of Section 50 of NDPS Act have been complied with or not.

20. At the stage of bail it cannot be precisely ascertained that whether compliance of Section 50 of NDPS Act has been substantially made or not, it can only be ascertained during trial.

21. The Constitution Bench of Apex Court in case of Vijaysinh Chandubha Jadeja (supra) observed that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 of NDPS Act had been met, is a matter of trial (see Para 31).

22. As in the present matter, from the perusal of the recovery memo prima facie it appears that compliance of Section 50 of NDPS Act has been made, therefore, at this stage no finding could be recorded that it was not complied.

23. From the discussion made above, I find no merit in the argument advanced by learned Counsel for the applicant and as from the possession

of the applicant commercial quantity of Aprazolam powder, a narcotic substance was recovered, therefore, considering the provisions of Section 37 of NDPS Act, in my view it is not a fit case in which applicant should be enlarged on bail.

24. Accordingly, the instant bail application is **rejected.**

Order Date :- 5.1.2023
KK Patel / S.K.S.

Digitally signed by :-
KRISHN KANT PATEL
High Court of Judicature at Allahabad