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# Bombay HC grants bail to Polish national allegedly held in 2022 with 6kg heroin

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MUMBAI: A Polish national who was arrested by the CBI on 8th November, 2022 on information provided by Interpol for allegedly being in possession of 6 kg heroin worth Rs. 18 crores in the international market, was granted regular bail by Justice N J Jamadar of Bombay high court recently.

It was informed that Jasinski Andrzej Wieslaw, the passenger was to depart on 6 November 2022 from Victoria Falls Airport, Zimbabwe, transit to Addis Ababa (Ethiopia) and arrive on 7 November 2022 at 7.15 hrs. at Chhatrapati Shivaji International Airport, Mumbai with drugs hidden in his cabin baggage. A case of drug trafficking was registered against him in Mumbai when he landed.

The accused represented by advocate Prem Pandey contended that there was a lacuna on the part of CBI in not adhering to the mandatory provision contained in Section 42 & 52-A of NDPS Act.

Jasinski Andrzej Wieslaw was the accused who sought bail. His case largely focused upon two grounds, one, that the CBI failed to conduct the search and seizure of alleged contraband through authorized person as per section 42 of NDPS Act. The seizure memo as well as statement of panch witnesses recorded that the search was carried out and suitcase was opened by independent witnesses in the presence of CBI team.

The CBI special prosecutor Amit Miunde opposed his bail plea. Munde argued that Munde would urge that since the entire bulk recovered from the possession of the Polish national has been stored and can be produced before

the Special Court, the provisions contained in Section 52-A of the NDPS Act governing search and seizure of contraband, are not required to be followed.

The SC has held that Section 52-A is of mandatory nature and it was obligatory to prepare an inventory of seized contraband and then make an application to the Magistrate for getting its correctness certified. The section 52-A mandates upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

The HC in a detailed order said, “From the perusal of the seizure memo, it becomes abundantly clear that the contraband was allegedly found concealed in the pink trolley suitcase which was being carried by the applicant as a check-in baggage. The contraband was not recovered from the ‘person’”

The bail plea said when the person was searched, section 50 which mandates informing him of his rights has to be scrupulously followed, which had not been.

The HC observed that Indeed, the seizure memo as well as the statements of the panch witnesses record that the search was carried out and suitcases were opened by independent witnesses in the presence of the CBI team. “However, the aspect as to whether the search was carried out by the empowered officer appears to be prima facie debatable,” said Justice Jamadar after hearing submissions of his counsel Aseem Naphade.

The HC also cited top court rulings and its enunciation of the law, to hold that the submission of Munde that since bulk is available, compliance of the mandate contained in Section 52-A of the Act, is not warranted, does not merit acceptance. “If the submission sought to be canvassed on behalf of CBI is accepted, the provisions contained in Section 52-A would be rendered otiose,” held the HC.



Naphade's submission "that a strange procedure of obtaining the approval of the learned Magistrate for retention of the contraband substance and the articles was adopted appears to be well founded," the HC ruled adding, "Such course has no legal sanctity."

The grounds of the search having been carried out by unauthorized persons and the non-compliance of the mandatory provisions contained in Section 52-A of the Act, prima facie, appear to be sustainable said the HC granting bail on a PR bond of Rs 1 lakh with two sureties and conditions including that the accused shall mark his presence before CBI, EO-II, New Delhi, on first Monday of every month between 11 am to 1 pm for three years or till the conclusion of the trial, whichever is earlier.

