

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.877 OF 2017

Ganesh Elamale Kounder

Applicant

versus

The State of Maharashtra

Respondent

Mr.Ayaz Khan for Applicant.
Mr.Ameet Palkar, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 13th June 2017

PC :

1. This is an application for bail. The Applicant is arrested in connection with CR No.201 of 2016. The offence is registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). It is the prosecution case that on 3rd December 2016, the complainant was informed by the informant that the Applicant-accused has supplied Charas to persons named Mohd. Babu Khan, Mohd. Javed Shaikh and they are coming to sell the same. After recording the information, the raiding party proceeded at the spot. The two accused were apprehended. On search of the accused Javed Khan, he was found in possession of 160 grams of Charas and the other accused was found in possession of 1,070 grams of Charas.

2. The Applicant was arrested on 26th December 2016. The prosecution case against the Applicant is that he is the supplier of the

said contraband. The Applicant preferred an application for bail to the Sessions Court, which has been rejected. Hence, present application.

3. Learned advocate for the Applicant submits that there is no evidence to show his complicity with the accused who were found in possession of contraband. Except the statement of the co-accused, there is no evidence to connect him with the crime. He submitted that two accused who were found in possession of the contraband, were granted bail by NDPS Special Court. The accused Mohammed Khan was granted bail vide order dated 5th May 2017 on the ground of non compliance of Section 42 of the Act. The other accused was granted bail on 23rd December 2016 on the ground that he was found in possession of non commercial quantity. Learned advocate further submitted that the prosecution case is that during house search amount of Rs.77,000/- has been recovered from Applicant's house. It is further alleged that an affidavit was found purportedly executed by one Raju Subramaniam dated 26th June 2016 for receipt of friendly loan. The said document in no way connects the Applicant in the said crime. There is no evidence to link alleged cash amount found with the Applicant with the offence.

4. Learned APP submitted that there is recovery of Rs.77,000/- from the house of Applicant. He submitted that the co-accused were acting at his behest. He submitted that affidavit referred to above was also recovered. He further pointed out that there are two cases registered against the Applicant. However, learned counsel for the Applicant submitted that as far as CR No.1 of 2003 which was

registered under Section 8D and Section 21 of the NDPS Act is concerned, the Applicant has been acquitted.

5. I have perused the first information report and the order passed by the Sessions Court. The Special Court has rejected the application on the ground that the Applicant was found in possession of cash of Rs.77,000/- and the affidavit referred above. It is pertinent to note that except the statement of the co-accused, there is no evidence to connect the Applicant with the said crime. The accused who were found in possession of the contraband, are granted bail by the Special Court. No connection is established with alleged cash and the affidavit with crime. In view of the above, the Applicant is entitled for bail. Hence, I pass following order :

ORDER

- (i) The Applicant be released on bail in connection with CR No.201 of 2016 registered with Byculla Police Station, Mumbai, which is subject matter of NDPS Special Case No.23 of 2017 pending before the Special Court, Mumbai, on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (ii) The Applicant is directed to report Byculla Police Station, Mumbai once in a fortnight on Saturday between 11 a.m. and 2.00 p.m. till further orders;
- (iii) The application stands disposed of.

(PRAKASH D. NAIK, J.)