

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 426 OF 2017

Mohd. Aslam Shami Khan vs. State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Advait Tamhankar h/f Taraq Sayed for the Applicant.
Mrs. R.M. Pethe, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 22nd February, 2018

P.C.

1. This is an application under Section 439 of the Cr.P.C. for bail in CR No. II-135/2016 dated 15.9.2016 registered with Bhiwandi City Police Station, District- Thane under Sections-8(k) 17,29 of the NDPS Act. (now culminated into NDPS Special Case No.67/2016)
2. Heard the learned counsel for the applicant and the learned APP for the State.
3. It is the prosecution case in brief that, after receipt of confidential information that three accused persons are arriving at a spot with contraband in their possession, a

trap was laid. The police accosted the accused persons and contraband i.e. opium weighing about 500 gram was found in their possession. The applicant came to be arrested on the spot on 15.9.2016 and after completion of investigation the police have submitted charge sheet.

4. Perused the charge sheet.

The Panchanama dated 15.9.2016 clearly indicates that, firstly there was a joint appraisal given to the accused persons which is in clear contravention of the decision of the Supreme Court in the case of State of Rajasthan vs. Parmanand and another reported in 2014 DGLS (SC) 213. The record further indicates that the alleged appraisal under Section 50 of the NDPS Act given to the applicant about his right to be searched before the Gazetted Officer or the Magistrate was not in consonance with the two decisions of the Constitution Bench of the Supreme Court in the cases of State of Punjab vs. Baldev Singh reported in (1999) 6 SCC 172 and Vijaysinh Chandubha Jadeja vs. State of Gujarat reported in (2011) 1 SCC 609.

5. In view thereof, the applicant is entitled to be

released on bail.

Hence, the following order.

- a) The applicant be released on bail in CR No. II-135/2016 dated 15.9.2016 registered with Bhiwandi City Police Station, District- Thane (now culminated into NDPS Special Case No.67/2016) on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- b) After his release from Jail, the applicant shall attend the concerned Police Station on every first Monday of the month between 11.00 a.m. to 1.00 p.m.
- c) The applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- d) Any two consecutive defaults in complying with the afore stated conditions will attract the provisions of cancellation of bail.
- e) The applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
- f) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)