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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.774 OF 2019

Faiyaz Ahmed Rasool Shaikh	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr.Anil Lalla, i/b Lalla and Lalla, for the Applicant.

Mr.A.A.Palkar, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 7th AUGUST, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.II-16 of 2017 registered with the Manikpur Police Station, Palghar, for the alleged offences punishable under Sections 25A, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, (N.D.P.S. Act) and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act ('M.C.O.C Act').

3. Learned Counsel for the applicant seeks bail on the ground of parity. He submitted that identically placed co-accused – Riyaz Shaikh (Original Accused No.4) and Sajid Shaikh (Original Accused No.6) have been enlarged on bail by this Court (Coram:Prakash D.Naik,J.), vide order dated 18th December, 2018. He submitted that the material *qua* the applicant is identical to that of co-accused – Riyaz Shaikh and Sajid Shaikh.

4. Learned APP has filed an affidavit of Vikas Naik, Sub Division Police Officer, Palghar Division, District Palghar. He does not dispute the fact that the role of the applicant is identical to that of co-accused – Riyaz Shaikh and and Sajid Shaikh, who have been enlarged on bail. Learned APP fairly submits that although, the applicant's Farm House was raided, nothing incriminating was found and what was found, tested negative for both, controlled as well as narcotic substance.

5. Perused the papers as well as the order dated 18th December, 2018, passed by this Court enlarging co-accused - Riyaz Shaikh and Sajid Shaikh on bail. On 24th September, 2017, on the basis of specific

information received from Manikpur Police Station, Palghar, an Audi Car was intercepted and three persons were apprehended i.e. Sarfaraz Memon, Sohail Memon and Uchenna Stephen (accused nos.1 to 3). The search of the vehicle resulted in recovery of 21.700 kilograms of Ephedrine, a controlled substance. According to the prosecution, accused – Sohail Memon made a disclosure statement on 3rd October, 2017, pursuant to which certain incriminating articles were recovered. On 12th October, 2017, Riyaz Shaikh (Original Accused No.4) was arrested, on the basis of an alleged statement of co-accused. The applicant was also arrested on 22nd January, 2018, on the basis of an alleged statement of co-accused. Subsequently, provisions of M.C.O.C. Act were applied to all the accused and after investigation, charge-sheet was filed.

6. Admittedly, there is no recovery of any incriminating substance at the behest of the applicant. Except the statement of the co-accused there is no material to connect the applicant with the alleged offences. It appears that when the Applicant's Farm House was raided, certain articles were seized and sent to the Forensic Laboratory, however, the report was negative for both, controlled as well as narcotic substance.

The role of the applicant is similar to that of co-accused – Riyaz Shaikh and Sajid Shaikh, who have been enlarged on bail. The observations made by this Court (Coram:Prakash D. Naik,J.) in its order dated 18th December, 2018, will also have a bearing whilst considering the applicant's bail application. Similarly, merely because the applicant has antecedents, also cannot be a ground to reject his application.

7. Considering the material *qua* the applicant, as well as on the ground of parity, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or more local sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., until further orders;

iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The Applicant shall not commit similar offence;

v) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

vi) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

viii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made herein.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.