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

CRIMINAL BAIL APPLICATION NO.1565 OF 2019

Sarfaraz Yusuf Memon	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL BAIL APPLICATION NO.1046 OF 2019***

Sohail Yusuf Memon	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Ayaz Khan a/w Mr.Dilip Mishra, for the Applicants.

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 these applications, the Applicants seeks their 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 8(c), 9(c), 22, 25, 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 applicants submits that the aforesaid applicants are Original Accused Nos.1 and 2. He submits that considering the fact that what was seized was a controlled substance i.e. Ephedrine, weighing 21.700 kilogram, the bar of Section 37 of the N.D.P.S. Act, will not apply. He submitted that M.C.O.C. Act was applied to the present case, as the applicants were allegedly associated with the organized crime syndicate conducted by original accused no.5 – Faiyaz Shaikh. He submitted that this Court (Coram:Prakash D. Naik,J.) whilst granting bail to co-accused – Riyaz Shaikh and Sajid Shaikh, vide order dated 18th December, 2018, has considered the application of the M.C.O.C. Act, to the facts of the present case.

4. Learned APP does not dispute that the bar of Section 37 of the N.D.P.S. Act, will not apply to the facts of the present case. He also

does not dispute the fact, that the applicants have no antecedents of a similar nature i.e. under the N.D.P.S. Act.

5. Perused the papers as well as the order dated 18th December, 2018 passed by this Court whilst 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. Applicants Sarfaraz Memon and Sohail Memon and one, 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, applicant – 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 and later co-accused - Faiyaz Shaikh was also arrested on the basis of the statement of a co-accused. Subsequently, provisions of M.C.O.C. Act were applied to all the accused and after investigation, charge-sheet was filed. The aforesaid applicants were in the Audi Car which was intercepted by the police and in

which 21.700 kilograms of Ephedrine, which is a controlled substance, was seized. The applicants are in custody since September, 2017. Investigation is complete and charge-sheet is filed. None of the applicants have antecedents under the N.D.P.S. Act. As far as Section 37 of the N.D.P.S. Act, is concerned, there is no bar in view of the fact that what was seized was a controlled substance. As far as application of M.C.O.C. Act is concerned, the accused who are alleged to have been running the syndicate 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 applicants bail applications.

6. In view of the aforesaid and having regard to the peculiar facts of this case, there is no impediment to enlarge the applicants on bail. The applications are accordingly allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each, with one or more local sureties in the like amount, from Thane or Palghar District;

- ii) The Applicants 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 Applicants shall inform their 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 Applicants shall not commit similar offence;
- v) The Applicants shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- vi) The Applicants 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 Applicants, in the Registry of the trial Court, within two weeks of their 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 Applicants' bail.

7. The Applications are allowed and disposed of in above terms.

8. 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.

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

REVATI MOHITE DERE, J.