

Anand

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

BAIL APPLICATION NO. 1305 OF 2018

Arif Abdul Shaikh .Applicant

Vs.

Union of India & anr. .Respondents

Mr. Ayaz Khan, Advocate, for the Applicant

Ms Yasmin N. Katpitia, Advocate, for the Respondent No. 1

Mr. P. H. Gaikwad, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 14.06.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with NCB / BZU / C. R. No. 12 of 2016 registered with the Narcotics Control Bureau, for the alleged offences punishable under Sections 8(c) / 20(c) r/w 29 of the Narcotic Drugs And Psychotropic Substances Act.

3. Perused the papers. According to the prosecution, the

officer of the Respondent No. 1 received information that two ladies i. e. Mehbooba and Mehroon, would be travelling in the last ladies general coach of Paschim Express; and that the said ladies carrying 40 Kgs Charas in their luggage would alight at Borivali Station, where the said Charas would be handed over to one person by the name, Pappu alias Sajid Bhai i. e. accused No. 1. Pursuant to the said information received on 24.08.2016, a trap was laid by the officers of Respondent No. 1 and all the three accused were arrested on the spot alongwith the contraband i. e. 40 kgs Charas. The said accused were, thereafter, taken to the NCB office. In the first statements of the accused Nos. 1 to 3, recorded by the NCB, on 26.08.2016, admittedly, the Applicant's name does not figure. It appears that after the first statements were recorded, the said accused were placed under arrest and they were produced before the learned Magistrate and their first remand was taken. On 28.08.2016, the accused Nos. 1 & 2 in their second statement allegedly disclosed that part of the contraband was to go to the Applicant and his father. Pursuant to the said information, the Applicant and his father were arrested, when they were travelling in a car, at Thane on 23.12.2016 and

they were taken to the NCB office. At the office, the Applicant's statement under Section 67 of the NDPS Act was recorded, partly on 23.12.2016 & partly on 24.12.2016. Admittedly, the said statement which was recorded is a computerized typed copy. After recording the said statement, the Applicant and his father were placed under arrest. During the course of investigation, the Applicant was found to be involved in two other similar cases. The role of the Applicant in the present case is stated to be identical to the other two cases, in which he was arrested.

4. It is not in dispute that in all the three cases, including the present case, no contraband was found on the Applicant or in his house. The Applicant's arrest is based solely on the statement of the co-accused recorded under Section 67 of the NDPS Act and the Applicant's statement recorded on 23.12.2016 & 24.12.2016. The trial Court based on similar statements and similar facts, granted bail to the Applicant, in both the said cases. In the present case, the material against the Applicant is the same. Considering the material on record, prima facie, it is difficult to come to the conclusion that there are reasonable grounds for believing that

the Applicant is guilty of the offences for which he is charged.

5. Considering the aforesaid, the Application is allowed and the Applicant is granted pre-arrest bail on the following terms & conditions :-

O R D E R

(i) The Applicant be enlarged on bail, on executing P.R. Bond in the sum of **Rs. 1,00,000/-** with one or two sureties in the like amount;

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

(iii) The Applicant to co-operate in the conduct of the trial;

(iv) The Applicant shall attend the Court on on all dates given by the trial Court;

(v) The Applicant to file an undertaking with regard to clauses (ii) to (iv), in the trial Court, within one week of his release;

(vi) If there are two consecutive defaults in appearing before the trial Court, the prosecution shall be at liberty to seek

cancellation of the Applicant's bail.

6. The Application is allowed in the aforesaid terms and is accordingly disposed of.

7. 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 in this order.

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

(REVATI MOHITE DERE, J.)