

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

CRIMINAL BAIL APPLICATION NO.2237 OF 2019

Abdul Rashid Mulla Applicant

versus

State of Maharashtra Respondent

**WITH
CRIMINAL BAIL APPLICATION NO.2239 OF 2019**

Mustakeem Mohd. Ali Applicant

versus

State of Maharashtra Respondent

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- Mr.Taraq Sayed i/b. Advait Tamhankar, Advocate for Applicant.
- Mr.S.R. Agarkar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 10th DECEMBER, 2020**

P.C. :

Pradeepkumar
P. Deshmane

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Pradeepkumar P.
Deshmane
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1. Both these applications i.e. Bail Application No.2237/19 and Bail Application No.2239/19 are decided by this common order because they are concerning the same

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investigation. For the sake of convenience the Applicants are referred to by their names as Abdul Rashid and Mustakeem. The investigation is over and the charge-sheet is filed.

2. The Applicants are seeking their release on bail in connection with C.R.No.41 of 2018 dated 19/09/2018 registered with Anti Narcotic Cell (for short 'ANC'), under sections 8(c) r/w 22(c), 23, 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985. The Applicants are arrested on 22/09/2018. Since then they are in custody.
3. The prosecution story is that, on 18/09/2018, a lady travelling to Doha, Qatar by name Furkana Khatun Shaikh was stopped at Chhatrapati Shivaji Maharaj International Airport, Sahar. Her baggage was checked. One of the bags was of dark purple colour. It had three story books and bangles. The contraband mentioned as Amphetamine weighing 465 gms was recovered from those articles. Furkana was arrested. Contraband was seized. Samples were drawn. Panchanama was carried out

and the FIR was lodged. She was arrested. During investigation it was transpired that she had received those articles from one Tabassum Shaikh and one Rashid Hasan Faraz. According to investigating agency the Applicant Mustakeem, the Applicant Abdul Rashid, absconding accused Niyaz and Shoeb were staying in Zam Zam Hotel on 17/09/2018. Accused No.3 Rashid Faraz was given 465 gms of contraband kept in dark purple trolley bag, on 17/09/2018 at around 11.00 p.m. which was given to Furkana at Hotel Shalimar by another accused Tabassum. Furkana tried to go abroad when she was stopped and arrested.

4. Heard Mr.Taraq Sayed, learned counsel for the Applicant and Mr.S.R. Agarkar, learned APP for the State.
5. With the assistance of learned counsel for both the sides I have gone through the entire chargesheet. The C.A. report shows that the seized article was in fact a psychotropic substance known as Metha-amphetamine. The investigation was

carried out. The charge-sheet contains statements of officers of ANC as well as the Panchas. At this stage, there is hardly any dispute about interception of Furkana and recovery of the contraband from her. The seized contraband was weighing more than the commercial quantity.

6. Mr.Taraq Sayed learned counsel for the Applicant submitted that in the entire charge-sheet, there is hardly any material against the present Applicant. The only material worth mentioning is that the Applicants and the aforementioned absconding accused had stayed in Zam Zam Palace hotel for a short while in the same room. The statement of Manager of hotel to that effect shows this fact. There is a CCTV footage, but it does not show that the Applicants were leaving the hotel in company with the absconding accused Niyaz and Shoeb.

7. The learned APP could not point out anything further except emphasizing the fact that these Applicants had occupied the same room with Niyaz and Shoeb. The prosecution case is

that Niyaz and others had given that bag to arrested accused Rashid Faras to be handed over to Furkana on the directions of the Applicant Mustakeem. However, there is nothing in the entire chargesheet to show that Mustakeem had given such directions to Rashid Faras. The prosecution story remains within realm of suspicion. The only evidence as pointed out according to Mr.Sayed is that they had occupied the same room.

8. I have considered these submissions. The offence is undoubtedly serious involving commercial quantity of contraband. However, the evidence against these Applicants is weak. There is hardly any evidence against them except the statement of the Manager of Zam Zam Palace hotel. The statement recorded on 30/09/2018 shows that the Applicants as well as shoeb had occupied the same room and they had left at the same time. However, that statement does not show that Niyaz was carrying any purple coloured trolley bag.

9. The statement of cashier of Shalimar hotel does not

help the prosecution except showing that he had seen the one person with trolley bag, discussing something with two ladies. There is no identification parade of that person and no description of the bag is given. Thus, in the entire charge-sheet there is no material against the present Applicants showing their complicity or collusion with the other accused. In this view of the matter, I am satisfied that there are reasonable grounds for believing that the Applicants are not guilty of any offence involving commercial quantity of any Narcotic drug or Psychotropic substance. Nothing was shown to this Court to indicate that the Applicants have any criminal antecedents. Therefore there is no reason to believe that they may commit similar offence while on bail.

10. The Applicants are from the State of Kerala. The offence is serious though bail is granted to the Applicants, they will have to furnish local sureties.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No.41 of 2018 dated 19/09/2018 registered with Anti Narcotic Cell, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One lakh Only) each, with one or two local sureties each in the like amount.
- (ii) The Applicants shall attend the office of the investigating agency on 1st Monday of every month between 10.00 a.m. to 11.00 a.m.
- (iii) The Applicants shall attend all the dates in the Court during trial unless prevented by a reasonable cause.
- (iv) The Applicants shall deposit their passports, if any, with the investigating agency before being released on bail.
- (v) Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)