

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1349 OF 2021

Wasim Akram Mohd.Kasim Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Prashant Aher i/b Khalid Shaikh for the Applicant.
Mr.S.H.Yadav, APP for the State.

API Dharmaraj Bangar attached to Central Crime Branch,
Nashik City preset.

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CORAM: BHARATI DANGRE, J.
DATED : 18th AUGUST, 2021

P.C:-

1. The applicant, who is a rickshaw driver by occupation, came to be arrested on 11/07/2020 in C.R.No.323 of 2020 registered with Bhadrakali Police Station, Nashik. The said C.R. arraigns two other persons as accused and invokes Section 8(c), 20(b), 29 of NDPS Act and Section 188 of IPC. On completion of investigation, charge-sheet came to be filed on 31/08/2020. His bail applications came to be rejected attributing his involvement in the crime.

2. A report came to be lodged by Police Constable with Bhadrakali Police Station, Nashik on 05/07/2020, alleging that on the earlier date at 19.30 hrs., accused Nos.1 and 2, namely,

Wasim Vajir Shaikh and Ajay Suresh Garud were found carrying 'Charas' a contraband weighing about 240 gram worth Rs.48,000/- for the purpose of its sale. They came to be arrested and the investigation led to the present applicant, who came to be added as accused No.3 as it was divulged by both the accused that it is this accused (Applicant), who had sold 'Charas' to them. That is how he is indicted in the offence.

3. Learned counsel for the applicant, at the outset, argued that there is no recovery of any drug from the applicant though on his arrest, a house search was carried out. He would further submit that the contraband drug, being 'Charas' recovered from accused Nos.1 and 2 is of intermediate quantity and, therefore, rigours of Section 37 of NDPS Act are not liable to be invoked. Learned counsel would further submit that the statement of the co-accused, indicting the applicant, does not form part of the charge-sheet and what is only relied upon is reference of the statement of accused Nos.1 and 2, who while in custody, had disclosed that they had purchased the contraband from the applicant.

4. At the time of arrest of the applicant, he is found in possession of one mobile phone of Samsung company with two SIM cards; one being of Vodafone company. The prosecution rely upon the call details and the case is that the applicant was in constant touch with other accused persons. However, the charge-sheet also does not contain the statement of Nodal Officer. Even assuming for a moment that the applicant was in touch with other accused persons, that itself cannot be

considered to be an incriminating material, in absence of any evidence compiled in the charge-sheet establishing his link with the contraband, seized from accused Nos.1 and 2. Further, it is to be noted that the mobile phone is purchased by one Moin Mohd. Shaikh on 17/01/2019 and the tax invoice of the said mobile phone is compiled in the charge-sheet. The statement of Moin is not recorded to reflect that he had given the said mobile phone to the applicant or his mobile phone was stolen since it was recovered from the applicant. However, the two SIM cards in the said mobile phone from which the applicant is alleged to have established contact with the accused persons, stands in the name of the applicant. This itself is not sufficient to incriminate him.

5. Since the quantity of contraband involved in the office is not a commercial quantity, rigours of Section 37 need not be applied. Considering the material compiled in the charge-sheet, which do not attribute any recovery to the applicant and the only material being the phone calls, the applicant is entitled to be released on bail.

: **ORDER** :

(a) The Application is allowed.

(b) Applicant – Wasim Akram Mohd. Kasim Shaikh shall be released on bail in C.R.No.323 of 2020 registered with Bhadrakali Police Station, Nashik on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

- (c) The applicant shall mark his attendance in the concerned police station once in every month till framing of charge and thereafter as and when directed by the Sessions Court.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(SMT. BHARATI DANGRE, J.)