IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1485 OF 2021

Salman Shah Jamil Ahmed Shah .. Applicant

Versus

State of Maharashtra .. Respondent

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Mr.Imran Shaikh, Advocate for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 19, 2021.

P.C. :

This is an application for bail. The applicant was arrested on 19th February, 2018, in connection with C.R.No.II–4 of 2018, registered with Thane Nagar Police Station, for the offences punishable under Sections 8, 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, ("NDPS Act", for short). The complaint was registered on 19th February, 2018.

2 The case of the prosecution is that secret information was received by the police that on 19th February, 2018, at about 1:30 p.m., the person named Salman Shah Jamil Ahmed Shah is

likely to visit the place near Shivaji Maidan for selling Charas. On receipt of information, the police decided to conduct the raid and apprehend the accused. On completing formalities, team of the police visited place of incident. The applicant accused was found at the place of incident. His personal search has resulted in 900 grams of Charas. During the course of investigation, co-accused Shivkumar Sharma from whom allegedly contraband Charas was brought by the applicant accused for sale, was arrested. On completing investigation, charge–sheet was filed.

3 The applicant preferred an application for bail before the Sessions Court. The said application was rejected vide order dated 3rd October, 2018. The applicant thereafter preferred application for bail before this Court. The said application was allowed to be withdrawn as the Court was not inclined to grant bail vide order dated 9th January, 2019. The said order further noted that the applicant was 20 years old boy having no criminal antecedents and he is in custody from 19th February, 2018, and, hence, the application was allowed to be withdrawn and trial Court was requested to make an endeavour to complete the trial within a period of one year.

4 Learned advocate for the applicant has relied upon Roznama and contended that although the trial was expedited vide order dated 9th January, 2019, and, direction was given to conclude the same within a period of one year, there is no progress in the trial. The applicant has continued to be in custody for a period of 2 and ½ years thereafter. The applicant is in custody for total period of about 3 years and two months.

5 Learned counsel for the applicant submitted that there are no criminal antecedents against the applicant. The contraband which was recovered from the applicant was non commercial quantity. The rigor of Section 37 would not be attracted against the applicant.

6 Learned APP submitted that huge quantity of Charas was found in possession of the applicant. The commercial quantity reflected in the schedule of the NDPS Act is 1000 grams. The applicant was short of 100 grams to make commercial quantity. The previous application was rejected by this Court. Hence, bail may not be granted to the applicant.

7 It is pertinent to note that the applicant is in custody from 19th February, 2018. Although the previous application was allowed to be withdrawn with directions to conclude the trial expeditiously, the trial could not be concluded for 2 and ½ years after the directions were issued by this Court. The applicant is in jail for more than three years. Undisputedly, the contraband recovered at the instance of the applicant was a non commercial quantity. The applicant has relied upon the decision of this Court in the case of ***Jagan Parasram Chavan Versus State of Maharashtra***[1]. In the said decision, the accused was found in possession of 14 kilograms of Ganja. The quantity seized was less than commercial quantity though not small quantity. This Court granted bail. It is not disputed that the quantity which is recovered from the applicant is less than commercial quantity. The said fact is also noted in the order passed by the Sessions Court. The learned Sessions Court although accepted the fact that rigors of Section 37 of NDPS Act are not applicable, the application was rejected on the ground that the applicant was found in possession of Charas. There is no impediment of Section 37 to grant bail. Considering the aforesaid circumstances, bail can be granted to the applicant.

1 2014 All MR (Cri) 4589.

:: O R D E R ::

(i) Bail Application No.1485 of 2021, is allowed;

(ii) Applicant is directed to be released on bail in connection with C.R.No.II–4 of 2018, registered with Thane Nagar Police Station, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant shall report concerned police station once in three months on 1st Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

(iv) Applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/-, for a period of eight weeks, in lieu of surety;

(vi) Bail Application No.1485 of 2021, stands disposed of accordingly.

(**PRAKASH D. NAIK, J.)**