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

BAIL APPLICATION NO. 2969 OF 2021

Shri Arbaj Abrar Fakir

...Applicant

Versus

State of Maharashtra

...Respondent

.....

Mr. M.S.Patankar for the Applicant.

Mrs. P.P.Shinde, APP for the Respondent -State.

.....

CORAM : V.G.BISHT, J.

RESERVED ON : 30TH NOVEMBER, 2021

PRONOUNCED ON : 14TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 283 of 2020 registered with Ratnagiri City Police Station for the offence punishable under Sections 8 (c), 20 (b) (C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act").

2. It is the case of prosecution that on 5th November, 2020, accused Shivlingappa Malleshi Pujari was found in possession of Ganja weighing 1.040 kg in an auto rickshaw bearing

registration No. MH-08-E-8771. During the course of enquiry, he revealed that the Ganga seized from him was supplied by applicant. Consequently, the applicant came to be arrested.

3. Mr. Patankar, learned Counsel for the applicant, submits that the applicant was not found in possession of the contraband. He has been arrested merely on the basis of statement of co-accused. In such circumstances, the applicant deserves to be enlarged on bail.

4. Mrs. Shinde, learned APP, on the other hand, submits that the applicant was main supplier. There are criminal antecedents inasmuch as there are four cases being faced by the applicant. Having regard to the nature of offence, the applicant does not deserve to be enlarged on bail.

5. Perused FIR. I have also gone through the order of the trial Court. The trial Court found that the quantity is less than commercial and more than small quantity i.e. 1 kg and therefore, was of the opinion that rigours of Section 37 of the NDPS Act would not be applicable. However, it is seen

that the applicant is involved in similar kind of offence. Admittedly, the applicant was not found in possession of contraband and it is only on the say of co-accused, he has been arrested.

6. As far as the criminal antecedents are concerned, learned Counsel for the applicant submits that in all cases, the applicant has been acquitted and this statement has not been disputed by learned APP. Moreover, learned APP has not been able to place anything on record to show that it was the applicant who had supplied contraband to co-accused.

7. Having regard to the facts and circumstances of the case and as also material on record, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Arbaj Abrar Fakir shall be released on bail in C.R. No. 283 of 2020 registered with Ratngairi City Police Station on his executing P.R. Bond in the sum of Rs. 20,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not indulge into similar activities.

(iii) The applicant shall attend the trial court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)