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

CRIMINAL BAIL APPLICATION NO. 3434 OF 2021

BABU RAZAK MAKHAN MANIYAR

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Mr. Amit Munde for the applicant

Ms. Sharmila S. Kaushik APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 6, 2021.

P.C.:

1] Applicant is seeking regular bail in C.R.No. 235/2021 registered with Navghar Police Station for offence punishable under Sections 8(c), 20, 21(b) 29 of the Narcotics Drugs and Psychotropic Substances, Act 1985 (Hereinafter referred to as 'the Act' for the sake of brevity)

2] Applicant was apprehended on 06/04/2021 as Section 29 (conspiracy) of the Act is invoked against the applicant.

3] Learned counsel for the applicant submits that apart from the fact that nothing objectionable was recovered from the custody of the applicant, the only incriminating piece of evidence available is, confessional statement of co-accused. He would further claim that C.D.R. details between accused Mukhtaar Ahmad and applicant upto 24/12/2020 whereas offence alleged to have taken place in the month of March 2021. As such, according to him, enough material is not placed by the prosecution on record to make out a case for achieving his conviction.

4] Learned APP submits that confessional statement recorded under Section 67 of the NDPS Act can be taken into account for the purpose of investigation, even if it has lost its binding force in view of Apex Court's Judgment in the matter of **Tofan Singh Vs. State of Tamil Nadu**¹. Further contention of learned APP is, more than 500 calls between the applicant and co-accused is worth considering in support of case of conspiracy. As such it is claimed that prayer for bail be rejected as there are two antecedents of theft.

¹ [2021 (4) SCC 1]

5] Considered submissions.

6] It is admitted position on record that applicant is booked in the offence in question only for the reason of conspiracy i.e. by invoking provisions under Section 29 of the Act. The fact remains that for conspiracy, mobile call details are relied and last such call was made in the month of December 2020 whereas offence claimed to have been committed in March 2021. As such, it is difficult to infer that immediately before commission of present crime, there was meeting of minds between the applicant and co-accused to commit serious offence.

7] Statement of co-accused recorded under Section 67 is not binding in view of Judgment of Apex court in the matter of Toofan Singh [cited supra].

8] In the aforesaid background, it is difficult to infer that there are reasonable grounds to believe that applicant is guilty of the offence as

alleged. That being so, case for bail is made out.

(i) Applicant is seeking regular bail in C.R.No. 235/2021 registered with Navghar Police Station for offence punishable under Sections 8(c), 20, 21(b) 29 of the Narcotics Drugs and Psychotropic Substances, Act 1985 upon furnishing P.R. bond in the sum of Rs. 1,00,000/- with one or two local sureties in the like amount.

(ii) Applicant shall neither influence witnesses in any manner nor tamper with evidence.

(iii) Applicant shall regularly attend the Trial. Upon two consecutive failure to attend the trial, the Trial Court is at liberty to initiate proceedings for cancellation of bail.

9] Application stands disposed of.

[NITIN W. SAMBRE, J.]