

NSC.

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

CRIMINAL BAIL APPLICATION NO.2019 OF 2019

Tabassum Arif Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Pradeep M. Havnur i/b Mr. Jayant Parab, for the Applicant.

Mr. S. V. Gavand, A.P.P for the Respondent – State.

ASI – Sanjeev J. Dhondwad, ANC, Kandivali Unit, Crime Branch,
Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th FEBRUARY, 2021

P.C. :

1. Heard learned counsel for the parties.
- 2 By this application, the applicant seeks her enlargement on bail in connection with C.R. No. 41 of 2018 registered with the Anti Narcotics Cell, (for short 'ANC'), Mumbai, for the alleged offences punishable under Sections 8(c) r/w 22(c), 23, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act')

3. Learned Counsel for the applicant submits that there is no material to connect the applicant with the alleged offences. He further submits that there is discrepancy in the colour of the trolley bag alleged to have been handed over by the applicant to Furkhana Khatoon Shaikh containing contraband. Learned Counsel relied on the order dated 10th December 2020, passed by this Court (Coram: Sarang V. Kotwal, J.) releasing co-accused - Abdul Rashid Mulla and Mustakeem Mohd. Ali, on bail.

4. Learned APP opposed the application. Learned APP has filed an affidavit of Umesh U. Sawant, Assistant Police Inspector, attached to Anti Narcotics Cell, Kandivali Unit, Crime Branch, D.C.B. CID, Mumbai. Learned APP submits that the statement of the applicant's husband – Arif Shaikh clearly reveals the complicity of the applicant in the alleged offences. He submits that the same is also corroborated by the CCTV footage (photographs).

5. Perused the papers. According to the complainant – Achamo Patton, Assistant Immigration Officer, Bureau of Immigration, working at Chhatrapati Shivaji Maharaj International Airport, Sahar, Mumbai, he was on duty on 17th - 18th September 2018 night, at the Airport. He has alleged

that on 18th September 2018, whilst he was checking the passports of passengers flying by Qatar Airways from Mumbai to Doha, accused No.1 – Furkhana Khatoon Shaikh came at the said counter. The complainant has stated that while checking Furkhana's passport, he noticed that she was frequently travelling to foreign countries, thus raising some suspicion. Pursuant thereto, the complainant called for a dog squad. As the dog found something suspicious in her bag, information was passed on to the ANC, pursuant to which the officers of ANC arrived. On examination of Furkhana's bag, she was found in possession of Amphetamine, a narcotic drug weighing 465 gms, valuation of which was Rs.23,25,000/-. After registration of the complaint, investigation commenced. During the course of investigation, several statements were recorded and CCTV footage of the hotel where the accused handed over a purple bag containing the narcotic drug to Furkhana, were retrieved. During the course of investigation, it was also revealed that Amphetamine was given by the applicant to Furkhana for delivering the same at Doha with the help of Rashid Hasan Faras (Original Accused No.3). The statement of the applicant's husband – Arif Shaikh, *prima facie* clearly reveals the complicity of the applicant in the said crime. It appears from the said statement that the applicant had disclosed to her husband that she had to visit Hotel Shalimar, pursuant to which, he took her on his motorcycle on 17th September 2018 at about 22:30 p.m. He has stated

that his wife (applicant) had made a call from her mobile to one girl and had asked her to come to the said hotel, pursuant to which a burqa clad lady came to the hotel. He has stated that the applicant introduced the said lady as Furkhana (Original Accused No.1). He has further stated that the applicant disclosed to him that Furkhana was travelling to Qatar by morning flight and a friend of hers i.e. Rashid Faras (Original Accused No.3) was going to give her a bag and that the said bag was to be delivered at Qatar. The applicant's husband has further stated that the applicant called Rashid Faras, who came with a purple colour bag and that the applicant also introduced him to the said Rashid Faras. He has further stated that both the applicant and Rashid were giving instructions to Furkhana about going to Qatar and that Rashid also handed over Air tickets (Mumbai – Qatar, Qatar – Mumbai), a voucher of the hotel booking at Qatar and Rs.3,000/-. The said purple bag was seized from Furkhana at the Airport. The CCTV footage collected by the police from Hotel Shalimar shows Rashid Faras carrying a purple colour trolley bag and approaching the table where the applicant, her husband and Furkhana were sitting. There is no parity with co-accused – co-accused - Abdul Rashid Mulla and Mustakeem Mohd. Ali.

6. Considering the *prima facie* material, *qua* the applicant, it cannot be said that the applicant is not guilty of the offences with which she is charged. Hence, this is not a fit case to enlarge the applicant on bail.

7. Accordingly, the application for bail is rejected and disposed of as such.

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

REVATI MOHITE DERE, J.