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

CRIMINAL BAIL APPLICATION NO. 3656 OF 2021

ARMAAN RAJKUMAR KOHLI Applicant.

V/s

UNION OF INDIA & ANR Respondents

Mr. Aabad Ponda, Senior Advocate a/w Adv. Mr. Sanjeev Kadam a/w Adv. Mr. Vinod S. Chate a/w Adv. Ms. Kalpana Chate a/w Adv. Ms. Sneha Bhange i/b Chate & Associates for the Applicant in BA/3656/2021.

Ms. A.A. Takalkar, APP for the Respondent/State
ASG Mr. Anil Singh a/w Aditya Thakur a/w Shreeram Shirsat a/w Ms. Smita Thackur a/w Mr. Pranav Thackur a/w Mr. Amandeep Singh for Respondent-NCB.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 20, 2021

P.C.:-

1] Applicant came to be arrested on 28/08/2021 in C.R. No. 82 of 2021 registered with respondent police station for offence punishable under Sections 8(c), r/w 21, 22, 27A, 28, 29, 32(B) and 35 of Narcotics Drugs and Psychotropic Substances, Act 1985. (Hereinafter referred to as 'NDPS Act' for the sake of brevity)

2] Prosecution case against the applicant is, on specific inputs, respondent on 28/07/2021 seized 25 grams of off-white colour

substance (Mephedrone (MD)) from accused no. 1 Ajay Raju Singh. During interrogation, said accused revealed the name of the present applicant in a voluntary statement recorded under Section 67 of the NDPS Act. In the search carried out at the place of the applicant, 1.2 grams of white colour substance purported to be cocaine claimed to be seized vide Panchanama dated 28/08/2021. Applicant accordingly came to be apprehended and charged with offence under Sections 8(c), r/w 21, 22, 27(A), 28, 29, 32(B) and 35 of NDPS Act.

2] While trying to make out a case for bail, Mr. Ponda, learned senior counsel for the applicant would urge that admittedly quantity seized from the applicant (1.2 grams) is small quantity for which punishment at the most can be 6 months to one year. He would further claim that seizure is under doubt as Panch-1 in 13 cases and Panch-2 in 3 cases excluding the present one have acted as witness. He would submit that adverse material which can be noticed from the record viz. whats-app chat is of hardly any consequence as same has no significance in achieving conviction of the applicant. He would then urge that allegation of financing drug business is far away from the truth as from record necessary ingredients of the same cannot be inferred against the applicant. Shri. Ponda submits that based on material available on record,

likelihood of conviction of the applicant in an offence under NDPS Act cannot be inferred. He would further claim that applicant has suffered incarceration from 28/08/2021 i.e. for almost 3 and half months. That being so, he is entitled to be released. He has drawn support from the Judgment of this Court on the issue of commercial/small quantity, financing the trade/drug business, significance of whatsapp chat, satisfaction under Section 37 of the NDPS Act from the judgment/order in the matter of **Aryan Shah Rukh Khan V/s. The Union of India and anr¹, Rhea Chakraborty V/s. The Union of India and anr²** and Judgment of Apex Court in the matter of **Ragini Dwivedi alias Gini alias Rags V/s. State of Karnataka³**.

3] While countering aforesaid submissions, learned ASG Mr. Singh would strenuously urge that material collected till this date during investigation speaks of prima facie involvement of the applicant in a serious offence. According to him, provisions of Section 37 of the NDPS Act are very much attracted. Mr. Singh would further claim that statement of co-accused, particularly accused no. 1 which can be taken into consideration alongwith

¹ BA 3624/2021

² BA ST 2386/2020

³ 2021 SCC OnLine SC 174

whatsapp chat messages for investigation purpose primarily implicates the applicant in a serious offence which is punishable with more than one year. Mr. Singh then would urge that for the purpose of investigation, statement under Section 67 of the NDPS Act and also whatsapp messages can be considered during investigation to find out the trail of commission of offence.

4] Considered submissions.

5] Statement of accused no. 1 under Section 67 of the NDPS Act, whatsapp messages, bank account entries, voluntary statement of the present applicant and other main accused Sam, a Nigerian National, under Section 67 of the said Act, in clear terms demonstrates complicity of the applicant's involvement in a serious offence under NDPS Act. Investigation in the matter is still going on. The claim of senior counsel Mr. Ponda that only small quantity of drug is seized from the custody of the applicant will be of hardly any consequence at this stage of the proceedings as from the material collected during investigation, it is demonstrated before this Court the chain of the events to infer involvement of the applicant in a serious offence. There is justifying material on record to prima facie infer complicity of the applicant in an offence under Section 27A, 28 and 29 of the NDPS Act. As such, the very rigour of Section 37 of the NDPS Act is very much attracted.

6] The statements recorded under Section 67 of the NDPS Act of the applicant and co-accused confirm with the whatsapp chat from the mobile of the accused. The bank account entries in categorical terms speak of the applicant's involvement in the crime, as the bank entries match with that of the transactions reflected in the statements recorded under Section 66 of the NDPS Act, which is further confirmed with the whatsapp chat. As such, the complicity of the applicant in the serious crime can be inferred. The investigation against the applicant is still going on.

7] In the aforesaid background, reliance placed by Mr. Ponda, learned senior counsel on the Judgment of this Court in the matter of **Aryan Khan and Rhea Chakraborty** [cited supra] so as to claim that Section 67, 37 and provisions of Section 27A of the NDPS Act ought not to have been invoked against the applicant need not to be considered to the benefit of the applicant for the reason as investigation is still going on and there is enough material on record to prima facie infer the involvement of the applicant in serious offence. That being so, no case for bail is made out. Application stands rejected.

(NITIN W. SAMBRE, J.)