

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.914 OF 2021**

RASHID HASAN FARAS

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Ms. Munira Palanpurwala a/w Ms. Deepa S. Amati for
applicant.

Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 7, 2022.

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 8(c) read with Section 22(c), 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) in connection with C. R. No.41 of 2018 dated 19/09/2018 registered with Anti Narcotic Cell, Mumbai.
- 3.** The applicant is the original accused No.3. The applicant was arrested on 19/09/2018. It is the case of the

prosecution that on the basis of the information received by Mr. Achmo Patton who was at the immigration counter at Chatrapati Shivaji Maharaj International Airport, Sahar, Mumbai, the original accused No.1-Furkana who was trying to clear the customs at the immigration counter was arrested. This was because something suspicious about her activities was noticed. On search of her person and her baggage, it was found that she was in possession of 465 grams of narcotic drug called Amphetamine in a bag. During the interrogation, the accused No.1 said that it was the accused No.2 and the present applicant-accused No.3 who handed over the bags to her. Learned counsel for the applicant submitted that the applicant was not found in possession of any drugs. It is only on the basis of the statement of the co-accused and that of the husband of the accused No.1 that the applicant is arrested merely on suspicion. In her submission, even the CCTV footage, which is heavily relied upon, would reveal that the applicant was never instrumental in handing over the bag which was found in possession of the accused No.1-Furkana.

4. Learned APP on the other hand invited my attention to the incriminating materials on record to submit that this is not a fit case where the applicant could be enlarged on bail as in any case the applicant is not in a position to get over the rigours of Section 37 of the NDPS Act.

5. On record, I find from the statement of Arif, who is the husband of the accused No.2, that it is the accused No.2-Tabassum, who had called the applicant to the hotel to come with the purple coloured trolley bag. The accused No.2 introduced the applicant to Arif. Thereafter, the accused No.2 and the applicant were giving instructions to the accused No.1 about the onward journey to Qatar. The applicant handed over the air tickets from Mumbai to Qatar and Qatar to Mumbai and also the documents pertaining to the hotel booking at Qatar with cash of Rs.3,000/-. On record from page Nos.130 to 173 of the paper book are the extracts of the CCTV footage which reveal that the accused persons along with Arif had met at the hotel and it is seen that the applicant is giving something to accused No.1. What is material is the call detail records between the

applicant, accused No.2-Tabassum and accused No.1-Furkana. A number of calls were made on Furkana's cell phone by the applicant as well as the accused No.2 on 18/09/2018. Even on 19/09/2018 it is seen that Furkana has made several calls to the applicant. The text messages between the applicant and the accused No.1 which are placed on record are incriminating. The text messages reveal the conversation between the accused No.1-Furkana and Rashid. Thus, it is seen that the accused are closely associated with each other. There is material to link the applicant with the seizure of the contraband made from the accused No.1-Furkana. Merely because nothing is found in the possession of the applicant, by itself is not sufficient for the applicant to get over Section 37, having regard to the other materials on record.

6. Considering the materials on record, it is not possible for me to form an opinion that the applicant is not guilty of the offence so as to get over the rigours of Section 37 of the NDPS Act. The trial Court not to be influenced by these observations.

7. The Bail Application is rejected.

(M. S. KARNIK, J.)