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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1929 OF 2023

ASHOK UTTAM FULMALI

....Applicant

VERSUS

THE STATE OF MAHARASHTRA

.....Respondent

Advocate for Applicant : Mr. Shaikh Ashraf Patel h/f. Mr. A.P. Avhad, Advocate.

APP for Respondents: Mr. S.A. Gaikwad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 14th DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 565 of 2023 dated 30.05.2023 registered at Kotwali Police Station, Ahmednagar, for the offences punishable under Sections 8(c) 20(B), 2(c) and 29 of the Nargotic Drugs and Psychotropic Substances Act.

2. The investigation was set in motion on the basis of the information given by one Tanweer Mohamadli Shaikh, Police Constable at Kotwali Police Station, Ahmednagar. It is alleged that on 29.5.2023, on receipt of secret information a trap was arranged after complying with the requisite provisions of the NDPS Act. The police authorities had intercepted a two wheeler, bearing No. MH-17/ CU-4331, alongwith riders thereon. The pillion rider had a black colour sack on his back. On search of the motor cycle rider, Cannabis (Ganja) of 2 Kg 26 grams. was found in possession of the motorcycle rider. After removal of leaves actual weight of the Ganja was found to be 1 Kg. 959 grams. On the basis of aforesaid information, Crime No. 565 of 2023 has been registered against in all 4 accused persons including the

applicant. The applicant has been arrested on 30.5.2023. Since then he is behind bars. The prayer of the applicant for grant of bail has been rejected by the Court of Sessions vide order dated 5th October, 2023.

3. The learned advocate for the applicant would submit that the applicant has been falsely implicated in aforesaid crime. There is flagrant violation of the provisions regarding search and seizure as prescribed under the NDPS Act. He would submit that the quantity of the contraband was 1 Kg 969 grams, which is less than the commercial quantity. The investigation in the matter is complete. Charge sheet is filed. There are no criminal antecedents of similar offence. The co-accused is already enlarged on bail. Hence, he seeks release of the applicant on bail.

4. The learned APP opposes the prayer for grant of bail on the ground that, prima facie, there is sufficient material to bring home the complicity of the applicant in the crime. Further, the offence is serious and punishable with imprisonment upto 10 years.

5. Having considered the submissions advanced, it is apparent that the applicant has been arrested for the offence under Section 20(B), 2(c) and 29 of the NDPS Act. The quantity of contraband seized is weighing 1 Kg. and 959 grams, which is less than commercial quantity. The bar under Section 37 of the NDPS Act would not apply in such cases.

6. The co-accused with similar role is already enlarged on bail by order dated 5.12.2023 passed by Special Judge in Special Case No. 162 of 2023. The role of the applicant can not be segregated from the role of the applicant Sunil Pawar, who is already enlarged on bail. In that view of the matter, further detention of the applicant is not necessary. As such, a case is made out for grant of bail. Hence, following order :-

: O R D E R :

- (I) The application is allowed.
- (ii) Applicant – Ashok Uttam Fulmali, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount each, in connection with Crime No.565 of 2022 registered with Kotwali Police Station, Dist. Ahmednagar, for the offences punishable under Sections 8(c) 20(B), 2(c) and 29 of the Nargotic Drugs and Psychotropic Substances Act, on the following conditions :-
- (a) He shall not tamper with the prosecution witnesses.
- (b) He shall attend each and every effective date before the trial court.
- (iii) The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-