

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA  
CRIMINAL APPLICATION(BAIL) NO.2 OF 2023.**

MOHAMMAD RAFI THR. NEXT FRIEND  
(PRESENTLY LODGED AT JUDICIAL  
LOCKED UP CENTRAL JAIL) ... Applicant.  
VS  
STATE ( AS REP OFFICER IN CHARGE,  
ANTI NARCOTIC CELL, AND ANR ...Respondents.

Mr. K. Komalan, Advocate for the Applicant.

Mr. P. Faldessai, Addl. Public Prosecutor for the Respondents.

**CORAM: M. S. KARNIK, J.  
DATED: 28<sup>th</sup> MARCH 2023**

**P.C.**

1. Heard Mr. K. Komalan, learned Counsel for the applicant.
2. This is an application for bail. The offence is under Section 22(c) read with 29 of the NDPS Act, 1985 registered with the ANC police station vide FIR No. 24/2019. My attention is invited to the order dated 27.3.2023 passed in Criminal Application (Bail) No. 524 of 2021(F) in respect of the same applicant which was allowed to be withdrawn. It must be mentioned that so far as the Criminal Application (Bail) No. 524/2021(F) is concerned, it was filed at the stage where there was diversion of the opinion between the view taken by the Single Judge of this Court as regards whether the LSD paper should be considered as a part of the substance or not. The Division Bench settled the issue in the case of **H. S. Arun Kumar**

***Vs State of Goa in Criminal Application (Bail) No. 752/2021(F).*** Therefore, the application came to be withdrawn.

3. The learned counsel for the applicant apart from the merits, submitted that on the ground of parity, the applicant is entitled to be enlarged on bail. It is further submitted that the applicant is in custody for more than three years and there is no possibility of trial commencing and/or concluding any time soon. It is submitted that by order dated 2.9.2021, the co-accused– Shanoob K. H., was released on bail by this Court. The ground of parity and long incarceration is strongly urged.

4. The grounds of parity and the fact that now the applicant is in custody for more than three years are factors which need consideration. Further that the Division Bench having settled the controversy, it was suggested by me that the applicant could approach the trial Court with a fresh bail application. The learned counsel for the applicant submitted that there is no difficulty to file a fresh application for bail if the same is to be considered on its own merits and expeditiously without being influenced by the earlier order passed by the Special Court. This submission is reasonable and deserves acceptance in view of the distance of time the earlier application came to be rejected.

5. In this view of the matter, liberty is granted to the applicant to file fresh application for bail before the Special Court which shall be decided on its own merits without being influenced by any observations made by me in this order or those made by the Special Court in the order rejecting the bail application earlier filed.
6. The Special Court is requested to consider hearing the bail application expeditiously, if so filed, having regard to the fact that the applicant is in custody for more than three years and preferably within a period of six weeks from the date of its filing. All contentions are kept open.
7. Application for bail stands disposed of.

**M. S. KARNIK J.**