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

BAIL APPLICATION NO.688 OF 2023

MOHAMMED AZAM JUMMAN SHAIKH ..APPLICANT

VS.

UNION OF INDIA ..RESPONDENT

Adv. Abhishek Yende a/w Adv. Surbhi Agrawal for the
applicant.

Ms. Manisha Jagtap for respondent.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 4, 2023

P.C. :

1. Heard learned counsel for the applicant and learned
counsel for the respondent.

2. This is an application for bail in respect of the offence
punishable under Sections 8(c), 18(a), 20(b)(ii)C, 22A, 27A
and 29 of the Narcotic Drugs and Psychotropic Substances
Act, 1985 (hereafter 'NDPS Act' for short) registered on
09.12.2020 vide C.R. No.16 of 2020 with Narcotics Control
Bureau, Mumbai Zonal Unit.

3. Based on the statement of one of the co-accused
No.26 – Mr. Jitendra Jain under Section 67 of the NDPS Act,

the name of the present applicant was disclosed. The said accused – Jitendra Jain stated that he occasionally bought the contraband Charas from the present applicant who is the accused No.27. On the basis of the said statement dated 08.12.2020, a raid was conducted at the house of the applicant at 6.30 a.m. on 09.12.2020. There was a recovery of total 5 kg of commercial quantity of Hashish/Charas, total 1 gram of Opium, 0.3 grams of Ecstasy. The applicant was arrested on 09.12.2020.

4. Learned counsel for the respondent submitted that the applicant is a drug dealer and is involved in drug trafficking and that the recovery from the applicant's house is that of commercial quantity. The amount recovered from the house of the applicant is said to be proceeds of crime. Learned counsel for the respondent invited my attention to the detailed order passed by this Court in the case of co-accused No.26 – Jitendra Jain in Bail Application No.2682 of 2021 on 26.07.2022. This Court after detailed consideration and holding that the applicant therein appears to be a part of a larger chain and he was knowing the dealers and he is

one of the person in the whole chain, who was facilitating the supply of drug either procuring from the dealers directly or he was an intermediary link between the supplier and the purchaser and also from the other materials on record, came to the conclusion that the quantity of contraband in the entire C.R. is a commercial quantity, therefore rejected the application for bail.

5. Learned counsel for the applicant however invited my attention to the order dated 16.12.2022 passed by the Hon'ble Supreme Court in the case of Jitendra Jain which is at page 106 of the paper book. The order reads thus :-

"The prayer in this Special Leave Petition is to release the petitioner on bail in a case registered under Sections 8 read with Section 20(b)(ii)B, 27, 27A and 29 of the N.D.P.S. Act vide CR No.16/2020 dated 18-12-2020 registered at Police Station, Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai.

We have heard learned counsel appearing on behalf of the petitioner as well as learned Additional Solicitor General appearing on behalf Respondent No.1.

Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

The petitioner is, accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction the trial Court."

6. The applicant in the present case is in custody for 34 months. Though learned counsel for the respondent vehemently opposed the application for bail contending that the accusations levelled against the applicant is serious in nature, however having regard to the fact that the co-accused No.26 who had purchased the contraband from the present applicant (original Accused No.27) has been enlarged on bail by the Hon'ble Supreme Court, on the ground of parity, I am inclined to enlarge the applicant on bail as the applicant is now in custody almost for 34 months with no possibility of the trial concluding any time soon. I am informed that there are five criminal antecedents reported against the applicant. The applicant has been acquitted in two of the C.Rs. None of the antecedents are under the NDPS Act. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Mohammed Azam Jumman Shaikh in connection with C.R. No.16 of 2020 registered with Narcotics Control Bureau, Mumbai Zonal Unit shall be

released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Narcotics Control Bureau, Mumbai Zonal Unit once in a fortnight on 1st and 3rd Monday of each month between 11.00 a.m. and 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall not leave the area of Mumbai without the permission of the trial Court.

7. The application is disposed of.

(M. S. KARNIK, J.)