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

BAIL APPLICATION NO. 1084 OF 2022

Abbas Ali Razzak Hussain @ Zahir Rupani ..Applicant
VS.

1. Union of India

2. The State of Maharashtra ..Respondents

Ms. Munira Palanpurwala a/w Ms. Deepa S. Amati, for the Applicant.

Mr. Shreeram Shirsat, for Respondent No.1.

Mr. S. V. Gavand, APP for the State-Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : MARCH 2, 2023

P.C. :

1. Heard learned counsel for the applicant, learned counsel for NCB- respondent no.1 and learned APP.

2. This is an application for bail in respect of C.R.No. 71 of 2021 dated 25/07/2021 registered with Narcotics Control Bureau, Mumbai Police Station for the offence punishable under section 8(c) r/w sections 20(b)(ii)(c), 22(b), 27, 27A, 28, 29 and 30 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS' for short).

3. The applicant was arrested on 05/08/2021 and is now in custody for more than 1 year and 7 months. In all there are 4 accused. The applicant is the accused no.4. On 24/07/2021, the investigating agency received the specific information that the accused are in possession of narcotic substance. The raid was carried out. The accused nos. 1, 2 and 3 were found together in one house. There was no recovery from the accused no.1. From the accused no.2, 1.2 kg charas was recovered. This was a commercial quantity. It is the case that the accused no.3 made good his escape. The raiding party nabbed him and recovered from his possession 10.4 grams mephedrone which is intermediate/non-commercial quantity.

4. In the first statement of the accused no. 3 recorded under section 67 of the NDPS Act, the accused no. 3 did not name the applicant. It is in the 2nd and 3rd statement that came to be recorded, the applicant was named and this is how the applicant is arraigned as accused no.4. The applicant was arrested on 05/08/2021. There is no recovery from the present applicant.

5. Learned counsel Shri Shirsat for the respondent no. 1 submitted that the applicant no.2 was found in possession of 1.2 kg of charas which is a commercial quantity. The accused no.3 was also found in possession of 10.2 grams mephedrone which is intermediate quantity. On the basis of the statement of the accused no.3 recorded under section 67 of NDPS Act, the present applicant came to be arrested. According to him, having invoked section 29 of NDPS Act, the applicant will have to get over the rigours of section 37 of NDPS Act for securing his release on bail. Learned counsel Shri Shirsat further submitted that there are CDR call details on record indicating that as many as 36 telephone calls have been exchanged between the applicant and the accused no.3 during the period 01/05/2021 and 16/05/2021. Furthermore, Shri Shirsat placed emphasis on the statement of the applicant recorded under section 67 which revealed that the applicant had a plan to set up a factory along with the accused no.3 to manufacture and sell as much as 100 kg of mephedrone in one year. The plan could not go through because Covid pandemic which

intervened in the meantime. Shri Shirsat submitted that this would show the applicant's propensity to indulge in similar offence that too of such a big magnitude. He vehemently opposed the application for bail. It is further submitted that there is one criminal antecedent reported against the applicant registered vide C.R. No. 31 of 2020 under section 8(c) and 22(b) of the NDPS Act. While on bail, the present offence is committed.

6. The applicant is in custody for more than 1 year and 6 months with no possibility of the trial commencing and concluding any time soon. It needs to be noted that though accused nos. 1, 2 and 3 were found together, CDR details would reveal that the applicant was in contact with only the accused no.3. There is nothing on record to indicate that the applicant had anything to do with the accused nos. 1 and 2 who are found in possession of 1.2 kg of charas. It is in the statement under section 67, the applicant has stated that he intended to start a factory for manufacturing mephedrone along with the accused no.3. The statement cannot be relied upon. The quantity found from the

possession of the accused no.3 was intermediate quantity. The CDR call details in respect of the applicant and accused no. 3 are for the period between 01/05/2021 and 16/05/2021, not in close proximity to the information which was received on 24/07/2021. The applicant was not found in possession of any substance. Though the applicant not being in possession of any substance is not by itself sufficient to grant bail dehors the other materials which have to be seen, prima facie, in my opinion, for the purpose of bail, suffice it to observe that the applicant's dealing is with the accused no.3 who was found in possession of non-commercial quantity and hence, rigours of section 37 of the NDPS Act will not apply. Whether the accused nos. 1, 2 & 3 who were found together formed a part of the chain is an aspect which will be considered during trial.

7. So far as criminal antecedent is concerned, in that case, the applicant was not found in actual possession of the contraband, but it was on the statement of the co-accused that the offence was registered. The quantity found from co-accused was non-commercial. I feel that

the applicant should not be deprived of the facility of bail merely because there is a criminal antecedent reported against the applicant, having regard to the nature of the antecedent and the accusations herein. I propose to impose some stringent conditions while releasing the applicant on bail.

8. It is made clear that all observations made by me in this order are limited to considering this application and shall not be construed as an expression of an opinion on merits of the contentions. The trial Court not to be influenced by these observations during trial. Hence, the following order.

ORDER

(a) The application is allowed.

(b) The applicant – Abbas Ali Razzak Hussain @ Zahir Rupani in connection with C.R. No. 71 of 2021 dated 25/07/2021 registered with Narcotics Control Bureau, Mumbai Police Station shall be released on bail on his furnishing P.R. bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall report to the Narcotics Control Bureau, Mumbai once in a week on every Monday, between 11.00 a.m. and 1.00 p.m.

(d) Except for attending the investigating officer, the applicant shall not enter Mumbai and stay outside Mumbai till further orders of the trial Court.

(e) The applicant shall not indulge in such activities which would have effect of cancellation of the present bail.

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

(g) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of the concerned Police Station and shall keep him updated, if there is any change

10. The application is disposed of.

(M. S. KARNIK, J.)