



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

BAIL APPLICATION NO. 1628 OF 2023

SALIM FAKIR MOHAMMAD ANSARI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Chandka Lochan for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 09, 2023

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), 20(b)(ii)(c), 29 of the Narcotic Drugs and Psychotropic Substances registered on 26/10/2021 vide C.R. No.215 of 2021 with Bhoiwada Police Station, Thane.
- 3.** It is the case of the prosecution that the accused were travelling together in a tempo carrying contraband. On search, it was revealed that the accused were carrying

contraband substance 'ganja' weighing around 32 kgs.

4. So far as accused No.1- Rahim Karim Shaikh is concerned, this Court on 12/10/2023 passed the following order:-

"2. This is an application for bail in respect of the offence punishable under Sections 8(c), 20(b)(ii)(c), 29 of the Narcotic Drugs and Psychotropic Substances (hereafter 'NDPS' for short) registered on 26/10/2021 vide C.R. No.215/2021 with Bhoiwada Police Station, Bhiwandi.

3. There are in all two accused. The applicant is the accused no.1. The accused, two in number, were travelling in a tempo on 25/10/2021. The respondent received information that the accused persons were carrying contraband. On search, it was revealed that the accused were carrying contraband substance 'ganja' of 32 kgs. The contraband substance 'ganja' came to be seized.

4. My attention is invited to the Forensic Science Laboratory (FSL) report which is at page 286. The FSL report indicates that the samples which sent for analysis contained flowering/fruiting tops, leaves and stalks in a stapled polythene bag, packed in a packet.

5. The contraband "cannabis" is defined under Section 2(iii) of the NDPS Act which reads as under:-

"2(iii) "cannabis (hemp) means -

(a) charas, that is, the separated resin, in whatever form whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering of fruiting

tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.”

6. In view of the definition, it appears that the flowering/ fruiting tops, leaves and stalks were weighed together to arrive at the opinion that the contraband substance is a commercial quantity. Prima facie, this is in the teeth of the definition.

7. In my opinion, prima facie, the above factors are sufficient to overcome the rigours of Section 37 of the NDPS Act. I am further satisfied that as there are no criminal antecedents reported against the applicant, it is unlikely that the applicant will commit any offence while on bail as in any case I propose to impose the conditions while so enlarging the applicant on bail.”

5. Learned counsel for the applicant is justified in claiming parity for enlarging the applicant on bail with the co-accused who has already been enlarged on bail by the aforesaid order. The investigation is complete and the charge-sheet has been filed. The applicant was arrested on 26/10/2021 and is now in custody for almost 2 years. The trial is not likely to conclude any time soon. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Salim Fakir Mohammad Ansari in connection with C.R. No.215 of 2021 registered with Bhoiwada Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs.1,00,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of Bhoiwada police station twice a month every first and third Monday of the month between 11.00 a.m. and 1.00 p.m.
- (e) 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.
- (f) 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.
- (g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall

not seek unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

6. The application is disposed of.

(M. S. KARNIK, J.)