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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2108 OF 2023**

SAMEER RAIS SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Kamlesh Satre a/w Adv. Vikas Chavan for the
Applicant.

Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 3, 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(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act' for short) registered on 26.01.2021 vide C.R. No.29 of 2021 with Wagle Estate Police Station.
- 3.** The date on which the search and seizure of the contraband 'Charas' was recovered from the applicant is 25.01.2021. After following the procedure the respondent noticed that the applicant had six packets which contained

contraband 'Charas' weighing 2 kg 700 grams. Thereafter the contents of these six packets were mixed together and then the representative samples are drawn.

4. Learned APP submitted that commercial quantity of 'Charas' is found and therefore rigours of Section 37 of the NDPS Act will apply.

5. Learned counsel for the applicant invited my attention to the order dated 19.07.2023 passed by this Court in Parvez Haseen Khan vs. The State of Maharashtra (through A.N.C. Bandra Unit) in Bail Application No.3486 of 2021. This Court in paragraph 4 of the order dated 19.07.2023 has observed thus :-

"4. The panchanama dated 25/11/2020 records that the investigating agency had mixed together the entire contraband contained in all the three bags and thereafter drawn three samples, one of which was forwarded to CFSL for analysis. The learned Single Judge of Delhi High Court in **Amani Fidel Chris** (supra) has held that "Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would cease to be a representative sample of the corresponding container/package." It is stated that decision in **Amani Fidel Chris** (supra) was challenged by NCB before the Apex Court and that the Special Leave Petition has been dismissed by the Hon'ble Supreme Court. Similar view is taken by this Court in **Ibrahim Khwaja Miya Sayyed** and **Hari Mahadu Valse** (supra) and by Telangana High Court in **Baba Sow Chandekar** (supra)."

6. In my opinion the applicant is also entitled to the benefit of the said observations in the facts and circumstances of the present case. Furthermore the applicant was arrested on 26.01.2021 and is now in custody for more than two years and nine months. Even the charge has not been framed. The trial is likely to take a long time to conclude.

7. Learned APP submitted that there is one criminal antecedent reported against the applicant when he was found in possession of contraband 'Ganja'. The applicant has been enlarged on bail and later was punished till the rising of the Court.

8. In the facts and circumstances of the present case I am satisfied that the rigours of Section 37 of the NDPS Act can be overcome in view of the observations in Parvez Haseen Khan (supra). Furthermore I propose to impose stringent conditions and therefore it is unlikely that the applicant will commit any such offence while on bail. The applicant can be enlarged on bail Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Sameer Rais Shaikh in connection with C.R. No.29 of 2021 registered with Wagle Estate Police Station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Wagle Estate Police Station once in a month every first Monday of the 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 attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

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

(h) The applicant shall not leave the State of Maharashtra without the permission of the trial Court.

9. The application is disposed of.

(M. S. KARNIK, J.)