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

BAIL APPLICATION NO.3535 OF 2022

Gautam Dilip Datta ..Applicant
VS.
The State of Maharashtra ..Respondent

Ms. Ashwini Achari a/w Mr. Advait Tamhankar i/b Mr. Taraq Sayed, for the Applicant.
Ms. P. N. Dabholkar, APP for the State.
API- Mr. Shrikant Karkar, ANC Bandra Unit present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 20, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP.
- 2.** This is an application for bail. The applicant is accused no.1. The co-accused -Shafaan Javed Shaikh was released on bail by this Court by order dated 18/01/2023 in Bail Application No. 1869 of 2022. The relevant portion of the said order reads thus:

"2. This is an application for bail in connection with C.R. No. 78 of 2021 registered with Anti Narcotic Cell, Bandra Unit, for the offence punishable under sections 8(c), 20(c), 27(A) and 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 ("NDPS Act" for short).

3. The accused no. 1 was found with 1 KG of Charas valued at Rs. 50 Lakhs. This is not a commercial quantity. The accused no. 1 informed that the contraband was supplied by the present applicant. At the instance of the applicant, 110 GMs of Charas was recovered from the terrace of the building on 17/09/2021. On 25/06/2021 and 07/08/2021 the applicant received a sum of Rs. 6000/- and Rs. 3000/- from the account of accused no. 1 and hence the charge of section 27A of the NDPS Act was invoked against the applicant. Prima facie, in my opinion, the provisions of section 27A of the NDPS Act may not be applicable to the present case. It is not the allegation that the applicant is indulging in the financing, directly or indirectly, in view of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harboured any person engaged in any of the aforementioned activities, as it can be seen from the facts of the present case. The recovery made was from the terrace of the building which is accessible to all residents. The Charas was allegedly found in the bag which was kept in the sofa on the terrace.

4. Learned APP submitted that the fact that the bag is hidden in the sofa could be known only to the applicant. Even so, at the highest, the allegation is that the applicant is found in the possession of 110 GMs of Charas which is not a commercial but an intermediate quantity. Having taken a prima facie view, that section 27A of the NDPS Act will not apply, in such circumstances, the rigours of section 37 of the NDPS Act will not apply while considering the question of grant of bail or otherwise to the applicant.

5. The applicant was arrested on 16/09/2021 and is now in custody for almost 1 year and 4 months with the trial likely to take a long time to conclude. There are no criminal antecedents reported against the applicant. The charge-sheet has been filed and the investigation is complete. No purpose will be served by prolonging the custody of the applicant. The applicant can be enlarged on bail. Hence, the following order."

3. The applicant was found in possession of 1 kg of

charas which is non-commercial quantity. So far as the applicant is concerned, charas was found from the bag of the applicant. The present applicant cannot claim complete parity with the co-accused no.2, however, considering that the applicant is now in custody for more than 1 year and 5 months with no possibility of trial concluding any time soon, the applicant can be released on bail. There are no criminal antecedents reported against the applicant. The applicant was found in possession of non commercial quantity and hence the rigours of section 37 will not apply. The applicant therefore can be enlarged on bail. Hence, the following order.

ORDER

(a) The applicant – Gautam Dilip Datta in connection with C.R. No. 78 of 2021, registered with Anti Narcotic Cell, Bandra Unit, shall be released on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more local sureties in the like amount.

(b) 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.

(c) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of the Anti Narcotic Cell, Bandra Unit and shall keep him updated, if there is any change.

(d) The applicant shall report to the Anti Narcotic Cell, Bandra Unit, on every 1st and 15th day of the month.

4. The application is disposed of.

(M. S. KARNIK, J.)