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

BAIL APPLICATION NO.4069 OF 2023

MOHAMMAD ARSHAD MOHAMMAD

RAFIQ KHAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

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

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

Mr. Nitin Prakash Bhosale, Mumbra Police Station.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 21, 2023

P.C. :

- 1.** Learned counsel for the applicant seeks leave to amend the application.
- 2.** Leave is granted. Amendment to be carried out forthwith.
- 3.** Heard learned counsel for the applicant and learned APP for the State.
- 4.** This is an application for bail in respect of the offence punishable under Sections 8(c), 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS

Act", for short) registered on 05.05.2023 vide C.R. No.492 of 2023 with Mumbra Police Station.

5. While the police team was on patrolling duty two persons were found moving in suspicious manner. The patrolling officers of the respondent suspected that these persons were dealing in the contraband. On personal search of the present applicant who is the accused No.1, 30 grams of 'Mephedrone' (MD) was found. The quantity is an intermediate quantity.

6. It is the submission of learned counsel for the applicant that there is a violation of Section 50 of the NDPS Act. It is the contention of learned counsel for the applicant that the personal search of the applicant was first taken when the contraband MD was found on the person of the applicant and thereafter, the applicant was apprised his right under Section 50 of the NDPS Act. My attention is invited to the panchanama dated 04.05.2023 which is at page 32 of the paper book. Prima facie I find substance in the contention of learned counsel for the applicant.

7. Learned APP opposed the application for bail. The

Investigating Officer is present. Learned APP made an attempt to submit that the search has been conducted in accordance with Section 50 of the NDPS Act.

8. Considering that the applicant was found in possession of an intermediate quantity of contraband MD which is a non-commercial quantity, the rigours of Section 37 of the NDPS Act will not apply in the present case apart from noticing that prima facie the search violates Section 50 of the NDPS Act. The co-accused was found in possession of 27 grams of MD. There are no criminal antecedents reported against the applicant. The applicant was arrested on 05.05.2023. The investigation is complete and the charge-sheet has been filed. The applicant can be enlarged on bail by imposing conditions. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Mohammad Arshad Mohammad Rafiq Khan in connection with C.R. No.492 of 2023 registered with Mumbra 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 Mumbra Police 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 not leave the State of Maharashtra without the permission of the trial Court.
- (h) The applicant shall surrender his passport, if any, to the investigating officer.
- (i) It is made clear that if the applicant is found indulging in similar offences or any other offence in

future it is open for the prosecution to apply for cancellation of bail.

9. The application is disposed of.

(M. S. KARNIK, J.)