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

BAIL APPLICATION NO.125 OF 2024

NEAL RONNIE D'SILVA

..APPLICANT

VS.

1. THE STATE OF MAHARASHTRA

2. UNION OF INDIA

..RESPONDENTS

Adv. Ayaz Khan i/b. Adv. Zehra Charania for the applicant.

Mr. S. H. Yadav, APP for the State.

Adv. Sandesh Patil a/w Adv. Prithviraj Gole for respondent
No.2-NCB.

CORAM : M. S. KARNIK, J.

DATE : APRIL 10, 2024.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.

2. This is an application for bail in respect of the offence punishable under Sections 8(c) read with Section 20(b)(ii) (A), 22(c), 27(A), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) registered vide C.R. No.NCB/MZU/CR-36 of 2020 with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai.

3. The applicant is the accused No.2. The applicant was arrested on 25.11.2020. A secret information was received

by the NCB officials on 22.11.2020. The co-accused – Kerry Kelvin Mendes was apprehended by the NCB officials. The quantity found in the possession of the co-accused – Kerry Kelvin Mendes was 20 blots containing LSD weighing 0.3 gms which is a psychotropic substance and ganja weighing 0.95 gms. The LSD is a commercial quantity.

4. By an order passed today, the co-accused – Kerry Kelvin Mendes has been enlarged on bail on two counts. One is non-compliance with the provisions of Section 50 of the NDPS Act and second as the co-accused – Kerry Kelvin Mendes is in custody for more than three years and four months with no possibility of the trial concluding any time soon as even the charge has not been framed. From the voluntary statement of the co-accused – Kerry Kelvin Mendes at page 57 of the paper-book it appears that the co-accused – Ahmad Shaikh is a big time LSD trafficker active in Goregaon area. The co-accused – Ahmad Shaikh was supplying drugs to big clients/customers for LSD. The shortfall if any was sent through the present applicant and other small peddlers. From the statement it appears that

Ahmad Shaikh asked the present applicant to sell the contraband. The present applicant in turn handed over the contraband to the co-accused – Kerry Kelvin Mendes as he did not find any customer. As Kerry Kelvin Mendes also was not in a position to find any customer, the contraband was to be returned to co-accused - Ahmad Shaikh at which point of time the co-accused–Kerry Kelvin Mendes was apprehended.

5. No drugs were found in possession of the present applicant, but he was arrested on the basis of voluntary statement of co-accused – Kerry Kelvin Mendes.

6. Mr. Patil, learned counsel for the respondent No.2-NCB opposed the application for bail. An affidavit-in-reply has been filed on behalf of the respondent No.2 duly affirmed by Ashok Kumar Singh, the Intelligence Officer of the respondent. According to Mr. Patil, learned counsel for the respondent No.2-NCB, the material against the present applicant which disentitles him being enlarged on bail is thus :-

1. Voluntary statement U/s 67 of NDPS Act, as amended of the accused person and other co-accused person.
 2. During analysis of CDR of the accused persons, several call were found among the applicant and co-accused persons.
 3. A lot of financial transaction found between applicant and co-accused person.
 4. Several Whatsapp chat found in between applicant and co-accused persons.
 5. The voluntary statement corroborates the facts of financial transaction, CDR and whatsapp chat.
- 7.** My attention is invited to the other averments made in the affidavit-in-reply. It is thus submitted that there are ample materials against the applicant to show his involvement in the drug trade.
- 8.** As indicated earlier the contraband was seized from the possession of the co-accused - Kerry Kelvin Mendes who has been enlarged on bail. The applicant was not found in possession of drugs. The accusation is that the said contraband was handed over by the present applicant to the co-accused - Kerry Kelvin Mendes. The co-accused - Ahmad

Shaikh appears to be the prime accused who has also been enlarged on bail. As per the voluntary statement, the present applicant is a small time drug peddler. There are no criminal antecedents reported against the applicant. The applicant was arrested on 25.11.2020 and is now in custody for more than three years and four months with no possibility of the trial concluding any time soon. The prime accused – Ahmad Shaikh has been enlarged on bail by the trial Court. The accused found in possession of the contraband and so also the prime accused have been enlarged on bail. In my opinion, though the application is vehemently opposed by learned counsel for respondent No.2, considering the period that the applicant has spent in the custody with no possibility of the trial concluding any time soon and in the facts and circumstances of the present case, the applicant can be enlarged on bail. In my opinion, in the facts and circumstances of the present case, the rigors of Section 37 of the NDPS Act can be overcome. Further, I propose to impose stringent conditions while enlarging the applicant on bail and hence it is unlikely that

the applicant will commit any offence during the pendency of the trial. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Neal Ronnie D'silva in connection with C.R. No.NCB/MZU/CR-36 of 2020 registered with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai 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) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not

enter the jurisdiction of Mumbai/Mumbai Suburban District after being released on bail, till further orders of the trial Court. On an application made for modification of this condition at a later stage, the trial Court to consider the same on its own merits.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

9. The bail application is disposed of.

(M. S. KARNIK, J.)