



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1949 OF 2024**

Farhan Salim Shaikh @ Ferry

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Kamlesh M. Satre, for Applicant.

Mr. S.R.Aagarkar, APP for State.

API Shrikant Karkar, Bandra ANC present.

CORAM: N.J.JAMADAR, J.

DATE : 2 MAY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in Special Case No.237 of 2024 arising out of C.R.No.70 of 2023 registered with ANC Bandra Unit, for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge him on bail.
3. At the outset, learned Counsel for the Applicant submitted that the co-accused Salik Salam Qureshi (A4), Mohammed Farooq Abdul Sattar Sarvaiya and Mohammed Hanif Habib Sarvaiya have been released on bail by this Court as the interdict contained in Section 37 of the Act, is not attracted. Co-accused Salik Salam Qureshi who was found in possession of 25 gms of MD had named the applicant as the person from whom he had procured the contraband. In the search of the applicant, 25 gms MD was allegedly found. The prosecution alleged that the applicant and the co-

accused were the members of a drug cartel. In fact, the applicant was leading the said drug cartel.

4. While releasing the co-accused this Court has inter alia noted that the applicability of the interdict contained in Section 37 of the Act, appears to be contentious.

5. Learned APP submitted that there is material to indicate that the applicant was in touch with the co-accused i.e. accused Nos.2 to 4. It was further submitted that the applicant has antecedents. He was arraigned in C.R.No.11 of 2022 registered for the offences punishable under Sections 22(b), 22(c) and 29 of the Act.

6. Learned Counsel for the Applicant countered by canvassing a submission that in the said C.R.No.11 of 2022, the applicant came to be released on bail as no contraband was found in possession of the applicant in the said case. The applicant was roped therein, on the basis of the statement of the co-accused. The submission on behalf of the applicant is borne out by the observations of the learned Special Judge in the order dated 14 October 2022 in BA No.2311 of 2022 in C.R.No.11 of 2022. The learned Special Judge noted that nothing was recovered from the possession of the applicant in that case.

7. The applicant was allegedly found in possession of 25 gms MD. All the co-accused who have been arrested and released on bail were also found in possession of the intermediate quantity of MD. Apart from the statement of the co-accused and

the CDR, there does not seem to be any other material to prima facie connect the applicant with the other co-accused.

8. In the circumstances, the applicability of the bar contained in Section 37 of the Act, appears debatable. Since the co-accused have been released on bail and there does not seem to be much qualitative difference in the role attributed to the applicant and the co-accused, the principle of party applies. Hence, I am inclined to exercise discretion in favour of the applicant.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Farhan Salim Shaikh @ Ferry be released on bail in C.R.No.70 of 2013 registered with ANC, Bandra, Mumbai on furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before ANC, Bandra Mumbai on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. 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.

(v) 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)