

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1799 OF 2023

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Shakil Abbas Kondkari

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Dhanashree a/w. Mr. Aziz Khan, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 12, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant who is arraigned in C.R. No. 392 of 2021 registered with Kashimira police station for the offences punishable under sections 8(c), 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 seeks to be enlarged on bail.

3. The learned counsel for the applicant submitted that the two of the co-accused namely Arif Shaikh and Mohd. Sharif Shaikh have been released by this Court by orders dated 7th February, 2023 and 31st August, 2023, respectively. The learned counsel submitted that the applicant was not found in possession of any contraband article. The co-accused Arif Shaikh who was found in possession of the contraband articles i.e. 80 gm. of MD has been released on bail.

4. I have perused the order passed in the case of Aarif Shaikh (Bail Application No. 3158 of 2021). By ascribing reasons, this Court directed the release of the applicant. Paragraph Nos. 9 and 10 of the said order read as under:-

9] In my opinion, having regard to the language of section 42 of the NDPS Act, only the officers mentioned therein are empowered to carry out the search. It may be that the PSI was authorised, but the search was also carried out by the Police Naik. The Police Naik was not authorised to carry out the search. Prima facie, in my opinion, the search carried out also by one of the official (Police Naik) who was not authorised, renders the search illegal. These observations are resitricted for considering the application for bail. I am, prima facie, satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence.

10] Apart from what is observed above, I find that there are no criminal antecedents reported against the applicant and therefore, it is unlikely that he will commit the same offence in future. The applicant is in custody since 18/05/2021 for a period of more than 1 year and 8 months, without the possibility of the trial concluding any time soon. The applicant, therefore, can be enlarged on bail by imposing stringent conditions.

5. By a subsequent order dated 31st August, 2023 this Court has granted bail to the co-accused Mohd. Sharif Shaikh (Bail Application No. 3845 of 2022) who was found giving the contraband to accused No. 2. In the aforesaid view of the matter, the applicant also deserves to be enlarged on bail.

Hence, the following order.

ORDER

- 1] The application is allowed.
- 2] The applicant Shakil Abbas Kondkari be released on bail in C.R. No. 392 of 2021 registered with Kashimira police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 5] 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.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the 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 trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)