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

BAIL APPLICATION NO.3614 OF 2023

MOHD. SHOEB @ AAFSAR MOHD.

AJMAL SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Munira Palanpurwala Shaikh a/w Adv. Deepa Amati
Muttagi for the applicant.

Ms. Megha S. Bajoria, APP for the State.

PSI – S. D. Patil, Shivaji Nagar Police Station, Mumbai.

CORAM : M. S. KARNIK, J.

DATE : APRIL 3, 2024

P.C. :

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

2. This is an application for bail in respect of the offence
punishable under Sections 8(c), 22, 29 of the Narcotic
Drugs and Psychotropic Substances Act, 1985 (hereafter
'the NDPS Act' for short) registered on 18.11.2021 vide C.R.
No.391 of 2021 with Shivaji Nagar Police Station.

3. The applicant is the accused No.3. The applicant was
arrested on 23.11.2021. On 18.11.2021 the officers of
respondent were on patrolling duty at Shivaji Nagar where

they saw two unknown persons carrying two coffee colour cartons. During search, they were found in possession of 240 sealed bottles of BDPL Cholorpheniramine Malate and Codeine Phosphate Syrup of 100 ml. Phensirest cough syrup in the cartons. The said contraband was seized under the panchanama and accused Nos.1 and 2 i.e. Shafat Khan @ Shahrukh Khan and Saifali Ansari were taken in custody. Based on the statement of co-accused, while on patrolling duty, the applicant/accused was apprehended at new bus depot, A.J. retailer mobile shop, Beganwadi, Govandi with 200 bottles of BDPL Cholorpheniramine Malate and Codeine Phosphate Syrup of 100 ml. Phensirest cough syrup which came to be seized under panchanama and the applicant was placed under arrest. Learned counsel for the applicant submitted that there is a complete non-compliance of the mandatory provisions contained in Section 52(A) of the NDPS Act. It is further submitted that there is breach of the provisions of Section 50 of the NDPS Act.

4. Learned APP submitted that in respect of search of the bag, compliance of Section 50 of the NDPS Act is not

applicable. Learned APP placed reliance on the decision of the Supreme Court in the case of Ranjan Kumar Chadha vs. State of Himachal Pradesh¹ to submit that Section 50 will have no application when a search was taken of a bag and not that of his person. Learned APP was at pains to submit that it hardly matters whether the search of the bag is taken first and thereafter the accused is appraised of his right under Section 50 of the NDPS Act as in any case Section 50 of the NDPS Act is not applicable to search of the bag.

5. The contraband found in possession of the applicant is commercial quantity and hence the rigors of Section 37 of the NDPS Act apply. A reading of the panchanama dated 23.11.2021 reveals that the search of the bag was taken first and thereafter the applicant was appraised of his right to be searched in the presence of the nearest Magistrate or the gazetted officer. It is the submission of learned counsel for the applicant that when the search of the bag was taken, the applicant should have been appraised of his right under Section 50 of the NDPS Act first and then the search

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of the bag should have been carried out. No doubt in respect of search of the bag, Section 50 is not applicable. The observations that I have made are prima facie in nature only limited for deciding this application for bail and this contentious issue will obviously be decided during trial. Even the charge has not been framed. The trial is not likely to conclude soon. Considering that the applicant is in pre-trial custody for more than two years and four months, in the facts and circumstances of the present case, I find that the rigors of Section 37 of the NDPS Act can be overcome. Furthermore, there are no criminal antecedents reported against the applicant, therefore, it is unlikely that he will commit any offence during the pendency of the trial. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. The applicant can be enlarged on bail by imposing conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.

(b) The applicant-Mohd. Shoeb @ Aafsar Mohd. Ajmal Shaikh in connection with C.R. No.391 of 2021 registered with Shivaji Nagar Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more solvent sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Shivaji Nagar Police Station once in a week on every Monday of the month between 11:00 a.m. and 1:00 p.m. till the trial concludes.

(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 not leave the country without prior permission of the trial Court.

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

(h) The applicant shall surrender his passport, if any, to the investigating officer. If he does not have a passport, the applicant shall file an affidavit to that effect prior to his release.

6. The application is disposed of.

(M. S. KARNIK, J.)