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

CRIMINAL BAIL APPLICATION NO. 2992 OF 2024

Aadam Hussain Khwaja Hussain	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Atul Sarpande i./by Mr. Kamlesh Satre and Mr. Kamlesh Satre, Advocates for Applicant.
 - Mr. Sukanta Karmakar, APP for Respondent – State.
 - PSI Mr. Ghadge, ANC Azad Maidan Unit Mumbai present.

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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 04, 2025.

P.C.:

- 1.** Heard Mr. Sarpande, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.
- 2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.93 of 2023 registered with ANC Azad Maidan Unit, Mumbai for offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).
- 3.** The indictment of Applicant arraigned as Accused No.2 in present crime is on the basis of the statement of co-accused namely Accused No.1 and nothing more.

4. Admittedly, no conscious possession of any alleged contraband has been recovered from Applicant before me. Case of the prosecution is that in a chance recovery, co-accused was found with commercial quantity of the alleged contraband and in his disclosure statement given by him in inquiry under Section 67 of the NDPS Act he named the present Applicant accused. Thereafter Prosecution apprehended the present Applicant and he is under arrest since 02.11.2023.

5. The only material with the prosecution as put forth before me while arguing the present Application to enlist the complicity of the Applicant is that Applicant in his disclosure statement has disclosed the name of Accused No.3 from whom commercial quantity of the alleged contraband has been recovered. Contraband in question is MD. I have perused the statement of the present Applicant on his arrest which is appended at page No.33 of the Application which is in the spot panchnama wherein the present Applicant has stated that he would guide the prosecution team to the person who has sold the alleged contraband to Accused No.2. This complicity can be proved at the time of trial.

6. That apart, Mr. Karmakar, learned APP has on the ground of nexus stated that present Applicant was continuously in touch on his mobile phone for a substantial period of time to the extent of talking to

Accused No.3 for 266 minutes which is evident from his CDR. That by itself cannot prove the case of the prosecution at the *prima facie* stage about the involvement of the present Applicant or nexus of the Applicant unless the prosecution is able to show anything further to substantiate their claim. Admittedly, no money trail or tracing of funds received by Applicant before me has been shown by the prosecution.

7. Learned Prosecutor has referred to and relied upon the decision of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Mohit Aggarwal***¹ to contend that rigours of Section 37 of the NDPS Act would apply in the present case notwithstanding the fact that in so far as present Applicant before me is concerned, there has been no conscious recovery of any alleged contraband from him. In any event, reliance on the statement of co-accused and CDR records for the purpose of considering the bail has been considered in the following citations and the Supreme Court has held that the prosecution can prove its case at trial:-

- (i) ***Bharat Chaudhary Vs. Union of India***²;
- (ii) ***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)***³;
- and
- (iii) ***Mohd. Hussain Ahmed Shaikh @ Babool Bhai Vs. State of Maharashtra and connected matters***⁴.

1 AIR 2022 SC 3444

2 (2021) 20 SCC 50 : 2021 SCC OnLine SC 1235

3 2023 SCC OnLine 352 : @ SLP (Cri.) No(s).915 of 2023.

4 BA No.2000 of 2023 decided by this Court (Coram: N.J. Jamadar, J.) dated 09.05.2024.

8. The decision of the Supreme Court referred to and relied upon by the prosecution is on a completely different set of facts wherein a huge quantity of the alleged contraband was recovered from the godown of the Accused. After considering and perusing the record of the present case and in view of my *prima facie* observations regarding lapse in investigation, Applicant has therefore made out a case for grant of bail. Bail Application stands allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- with one or two sureties of the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station as and when called by the Investigating Officer;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

9. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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