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

CRIMINAL BAIL APPLICATION NO. 5385 OF 2024

Rahmeen Rafiq Charania

.. Applicant

Versus

Union of India and Anr.

.. Respondents

-
- Mr. Sherali Khan, Advocate for Applicant.
 - Mr. D. J. Haldankar, APP for Respondent No.2 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant. None appears for Respondent No.1 – Union of India.

2. Present Bail Application is filed on 20.12.2024 under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with F.No.NCB/MZU/CR-67/2021/1908 dated 16.07.2021 registered with NCB, Mumbai Zonal Unit, Mumbai for offences punishable under Sections 8(c) read with Section 20(b)(ii)(C), 27, 27-A, 28, 29 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

3. There are 2 Accused who are arrested in the crime. Applicant before me is arrested on 13.07.2021. Charge against him is that he was apprehended and arrested in possession of 320 grams of

charas which is admittedly intermediate quantity and 10 kgs of brownies cake laced with 15-16 *charas* as per the prosecution case.

4. Considering the incarceration of the present Applicant and the facts in the present Application, I am inclined to take up this Application immediately for hearing. What I find from the Application is that on 15.01.2025 an order was passed by this Court directing Respondent No.1, the principal contesting party to file Affidavit-in-Reply as per the request made by their Advocate within a period of two weeks. Two weeks period ended at the end of January 2025. Affidavit-in-Reply has not been filed till date. Thereafter Bail Application was once again listed and heard by the Court on 04.02.2025. Record shows that on that date, Advocate for Applicant did not remain present. However, learned Special PP for Respondent No.1 – Union of India appeared and sought further time to file Affidavit-in-Reply and hence again on 04.02.2025 two weeks time was granted to file Affidavit-in-Reply and serve a copy on the Applicant. That two weeks time ended on 18.02.2025 i.e. last week.

5. Today, when the Application is listed before me, Mr. Khan, learned Advocate for Applicant would submit that Affidavit-in-Reply is still not filed. Respondent No.1 in question is the Union of India. Time and again there is dereliction on the part of the Union of India to contest the matters which is especially observed in this Court. Today,

when the Application is called out, none is present on behalf of the Union of India. It is a sorry state of affairs to say the least.

6. Applicant before me is a young offender. Record shows that despite being in incarceration, Applicant is educating himself. He is currently pursuing and enrolled in post graduation diploma in Counselling Psychology through distance learning from Symbiosis Centre for distance education. Mr. Khan placed before me the Affidavit affirmed by Applicant's mother. The details of the Applicant's academic credentials are appended to that Affidavit. Immediately before his arrest, it is seen that Applicant had secured a degree in Master of Arts in Counselling Psychology from Singhania University in Rajasthan. *Prima facie* on going through the said certificate which is appended at Exhibit 'A' – page No.5 of the Affidavit, there is no reason to disbelieve the same. Thereafter it is seen that in the year 2020 – 2021, Applicant has completed his post graduation diploma in Counselling Psychology from Xavier Institute of Counselling Psychology, St. Xavier's College (Autonomous), Mumbai and it is *prima facie* seen that he has secured very good grades in all subjects. Applicant is also an assessee and his ITR of the year 2021 is also appended to the Affidavit. Sadly Applicant lost his father when he was in incarceration during the COVID-19 pandemic period. Applicant is currently enrolled in Symbiosis Centre for Distance Learning approved by AICTE, Government of India through jail which is evident from the

certificate which is appended at page No.11 of the Affidavit.

7. Considering that Applicant is incarcerated for a long period i.e. 3 years, 7 months and 13 days and the aforementioned details, there is no reason as to why the Bail Application should not be considered by the Court immediately in the above facts as every opportunity to continue studies and become a good citizen should be given to an undertrial accused in such a case.

8. Considering the aforesaid facts, I am giving one last opportunity to the Advocate for Respondent No.1 – Union of India to remain present. Respondent No.1 – Union of India is directed by Court to depute a responsible Advocate / Counsel to appear in the present Application after giving appropriate instructions and file its Affidavit-in-Reply. On the next adjourned date, no further time shall be given to the Union of India considering the previous orders which are passed by this Court and delineated herein above. It is clarified that this Court has repeatedly in its orders expressed its anguish for non-appearance of the Advocate / Counsel for the Union of India in matters when they are called out.

9. It is clarified that on the next adjourned date, if Respondent No.1 – Union of India's Advocate does not remain present, this Court shall not await his / her presence and proceed with passing appropriate orders in accordance with law.

10. Copy of this order shall be served by Advocate for Applicant on Respondent No.1 - Union of India.

11. Stand over to **05th March, 2025**. To be placed on the 'Supplementary Board'.

[MILIND N. JADHAV, J.]

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