

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2847 OF 2015

Ambadas @ Amol Shridhar Bankar . .. APPLICANT
Versus
State of Maharashtra .. RESPONDENT

...
Shri S.V.Sudrik, Advocate for applicant
Smt.P.J.Bharad ,APP for respondent State
...

CORAM : V.M.DESHPANDE,J.
DATED : 9TH JULY, 2015

ORDER :-

This is an application for bail. The applicant is arrested in connection Crime No.7/15 for the offence punishable u/s 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2] Heard Shri S.V.Sudrik, learned counsel for applicant in extenso and Mrs.Bharad, A.P.P. for respondent State.

3] Only submission of the learned counsel for the applicant is that the applicant who is one of the member of a private jeep was not having knowledge and even constructive possession over the contraband i.e. Ganja. Admittedly the contraband that is recovered from the private jeep is more than commercial quantity.

4] In so far as the submission of the learned counsel that the applicant was not having any knowledge therefore he was not in constructive possession over the contraband is to be rejected in view of the observations of Hon'ble Apex Court in the case of Dehal Singh V/s State of Himachal Pradesh reported on 2010 All MR (Cri) 4014 as rightly cited by learned A.P.P. for the State. In the said reported case, the Apex Court has observed that the appellant was travelling in a private car not in a vehicle which can be termed as public transport vehicle. The Apex Court has made distinction in between public transport vehicle and the private vehicle. In fact in paragraph no.22 of the said judgment, the Apex Court has observed as under :

“22] Both the appellants have been found travelling in the car from which Charas was recovered and therefore, they were in possession thereof. They were knowing each other. They were not travelling in a public transport vehicle. Distinction has to be made between accused traveling by public transport vehicle and private vehicle. It needs no emphasis that to bring the offence within the mischief of Section 20 of the Act possession has to be conscious possession. Section 35 of the Act recognizes that once possession is established the Court can presume that the accused had a culpable mental state, meaning thereby conscious possession. Further the person who claims that he was not in conscious possession has to establish it. Presumption of conscious possession is further available under Section 54 of the Act, which provides that accused may be presumed to have committed the offence unless he accounts for satisfactorily the possession of contraband. The view which we have taken finds support from a judgment of this Court in the case of **Madan Lal and another Vs. State of H.P. 2003(7) SCC 465 : [2003 All MR (Cri) 2412 (S.J.)**, wherein it has been held as follows :

“26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act

gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.”

5] Looking to the fact that the offence is committed against the society, the contraband is more than commercial quantity and the fact that the present applicant and the other co accused were knowing each other fully, no discretion can be exercised in the application. Hence application is rejected.

(V.M.DESHPANDE,J.)

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