

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6772 OF 2014

Sayyed Ejaj s/o. Sayyed Amjad **Applicant.**

Versus

The State of Maharashtra **Respondents.**

Mr. Rajendra S. Deshmukh, Advocate for applicant.

Mr. R.P. Phatke, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 6th January, 2015.

ORDER :

1. The application is filed for bail. Both the sides are heard. This Court has perused the papers of investigation.

2. The case is filed for offence punishable under section 20 (B) of Narcotic Drugs and Psychotropic Substances Act, 1983. The incident took place on 21.9.2014. On the basis of specific information received by Flying Squad of Sillegaon Police Station, action was taken and one car of Hundai company, Verena model bearing No. MH-20/DJ-0314 was intercepted. In the presence of panch witnesses, when search of car was taken, Ganja weighing 81 k.g. was recovered from the car. Present applicant was

present on driver seat and there was one more person by name Babu Khan Isak Khan in the car. The Ganja came to be seized along with the vehicle. The samples came to be separated and samples were sent to C.A. Office. After completion of investigation, chargesheet came to be filed against two persons for aforesaid offence.

3. The learned counsel for applicant submitted that there is no compliance of provisions of sections 42 (2), 55 and 57 of aforesaid Act. The provisions of sections 55 and 57 are directory in nature and they are not mandatory in nature. Further, their compliance can be ascertained during trial. The provision of section 42 (2) of the Act shows that information was required to be reduced in to writing. In the complaint itself it is mentioned about the receipt of information and entry of the information was taken in station diary. Thus, the defence taken is apparently not available.

4. The learned counsel for the applicant placed reliance on two orders made by this Court in **Criminal Application No. 6873/2014 [Mohd. Mustaq Mohd. Mastan Vs. The State of Maharashtra]** and **6051/2014 [Sheru Moinuddin Ameeruddin Vs. The State of Maharashtra]**. The learned

counsel for the applicant submitted that in those cases, this Court granted bail to the driver. He submitted that it cannot be said that there was conscious possession of applicant.

5. There cannot be any ratio atleast for granting bail. The facts and circumstances of each and every case are always different. Further, while considering the bail application in such a case, the Court is expected to see section 54 which raises presumption against the person who is found in possession of narcotic drug. This provision shows that if there is material on possession, it is up to the accused to show that he had no knowledge about keeping of drug. The prosecution is required to show that it was in possession of the accused. In section 37 (b) (ii), there is bar to grant bail, unless the two conditions laid down in this section are satisfied. From the material collected against the applicant, it cannot be said that there are reasonable grounds for believing that present applicant is not guilty of the offence. The material collected is sufficient to make out strong prima facie case and narcotic drug was in commercial quantity. The circumstance that C.A. report is not received need not be considered at this stage. This Court holds that it is not a fit case to grant bail.

6. In the result, the application is rejected. The observations made in the order are only for the purpose of present proceeding.

7. The learned Trial Judge is expected to expedite the case and for that a direction can be given to investigating agency to expedite the C.A. report. Registrar Judicial is to send the copy of this order to the concerned C.A. office for compliance. The C.A. office is expected to expedite the report whenever the accused persons are behind bars.

[T.V. NALAWADE, J.]

ssc/