

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

920 CRIMINAL APPLICATION NO. 1560 OF 2017

BHIMRAO KASHIRAM RATHOD AND ANR.
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Chatterji Joydeep
APP for Respondent/State: Mr. S.M. Ganachari
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CORAM : T.V. NALAWADE, J.
DATED : April 21, 2017.

ORDER :

1. The application is filed for bail. Both the sides are heard. A submission was made by the learned counsel for applicants that this is the first bail application of applicant No. 2 - Raju Govind Rathod and this is the the second bail application of applicant No. 1 - Bhimrao Kashiram Rathod. His previous bail application bearing No. 6965/2016 was withdrawn and at that time, liberty was given to approach the Court after receipt of the C.A. report in respect of contraband.

2. This Court has seen the papers of investigation. The crime is registered on the basis of report given by one Bhimashankar Hirmukhe, who was working as P.I. of Udgir City Police Station. When he and his police staff were on petrolling duty on the night between 31.7.2016 and 1.8.2016, they came

across with one Indica car at about 00.45 hours near the tea point situated at Sangam Pati. After seeing the police, out of three persons who were standing outside the car, two persons ran away. The police could catch hold of remaining person. He gave his name as Jaipal Pawar. During interrogation, Jaipal gave the name of his two associates and they are present applicants. Ganja weighing 21 k.g. was recovered from this car.

3. The papers of investigation show that the car was standing in the name of Anand Jadhav. Anand Jadhav is not traceable. The prosecution wants to prove that the the vehicle was purchased by Bhimrao Rathod, but there is no record with them. The learned APP submitted that there is statement of Jayram Pawar, the accused, who was arrested first to the effect that Bhimrao had purchased the car from Anand Jadhav. Jairam or Bhimrao will not be giving evidence in the Court and in view of these circumstances, it was necessary for the prosecution to show some material which can be proved in the Court and on the basis of which, it can be said that present applicants had some link with the car. Though police officers had seen three persons in the night time, near the car, the record does not show that they have identified applicant Nos. 1 and 2. Due to these circumstances, this Court holds that it is not desirable to keep

the applicants behind bar.

4. The learned APP submitted that one more crime was registered against the applicant Bhimrao in Karnataka State in March 2014 for similar offence. This circumstance cannot come in the way of Bhimrao as there is no evidence against Bhimrao in the present matter. In view of these circumstances, this Court holds that the bar of provision of section 37 of N.D.P.S. Act cannot come in the way of applicants to get the bail.

5. In the result, the application is allowed. The applicants are to be released on bail on their furnishing PR and SB of Rs. 50,000/- (Rupees fifty thousand) by each of them with one or more solvent sureties of like amount. They are not to tamper with the prosecution witnesses. They are not to commit similar offence.

[T.V. NALAWADE, J.]

SSC/