

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

CRIMINAL APPLICATION NO.2769 OF 2018

Vijay @ Raju Vishwanath Bhandari,
Age 47 yrs., Occ. Nil,
R/o Mujomba Galli, Kukana,
Tq. Newasa, Dist. Ahmednagar.

... **Applicant.**

... **Versus** ...

- 1 The State of Maharashtra
 Through Police Inspector,
 Tofkhana Police Station, Ahmednagar,
 Professor Chowk, Opp. to Akashwani,
 Savedi, Ahmednagar – 400 103.
- 2 Police Inspector,
 Tofkhana Police Station, Ahmednagar,
 Professor Chowk, Opp. to Akashwani,
 Savedi, Ahmednagar – 400 103.

... **Respondents.**

...

Mr. Sharad V. Natu,, Advocate for the applicant

Mr. A.A. Jagatkar, APP for the respondents/State

...

WITH

CRIMINAL APPLICATION NO.2515 OF 2018

- 1 Salim Usman Shaikh,
 Age 53 yrs., Occ. Nil,
 R/o Ward No.6, Behind Bus Stand,
 Shrirampur, Tq. Shrirampur,
 Dist. Ahmednagar.

- 2 Farukh Hussain Shaikh,
Age 53 yrs., Occ. Nil,
R/o Navin Bazar Tal,
Dr. Babasaheb Ambedkar Chowk,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.

... **Applicants.**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Tofkhana Police Station, Ahmednagar,
Professor Chowk, Opp. to Akashwani,
Savedi, Ahmednagar – 400 103.
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Tofkhana Police Station, Ahmednagar,
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Savedi, Ahmednagar – 400 103.

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Mr. Sharad V. Natu,, Advocate for the applicants

Mr. A.A. Jagatkar, APP for the respondents/State

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**CORAM : T.V. NALAWADE &
SMT. VIBHA KANKANWADI,JJ.**

DATE : 19th DECEMBER, 2018

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard finally with
consent of both parties and taken up for final disposal at admission stage.

2 Both these applications are filed by original accused persons.

3 Applicant in Criminal Application No.2769 of 2018 is
accused No.12 and applicant in Criminal Application No.2551 of 2018
are accused Nos.9 & 20. All of them have filed applications invoking the
inherent powers of this Court under Section 482 of the Criminal
Procedure Code, 1973 for quashing prosecution against them in Special
Case No.218/2017 under Sections 20 and 22 of Narcotic Drugs and
Phychotropic Substances Act, 1985 (hereinafter referred to as “NDPS
Act”).

4 The prosecution case is that, the police officers were on
patrolling duty at about 06.29 a.m. on 17-06-2017 near Hotel Sunny
Palace at Ahmednagar – Aurangabad Road. They noticed and suspected
two cars which were approaching Ahmednagar. They had given signal to
the cars to stop, however, the drivers did not stop and rashly moved
towards Ahmednagar City. The police party chased the cars and accused
Nos.1 to 5 were caught near Asha Talkies in the City. Accused Nos.1 and

6 were driving Bolero jeep bearing No. MH-17/ AJ – 6943 owned by accused No.32 and Innova Car bearing No. MH-24/ V - 1699 owned by accused No.33 respectively. The police had taken search of the cars and found 150 cannabis packets weighing 337.50 kg. worth Rs.50,62,500/- from Innova Car, and 136 cannabis packets weighing 306 Kg. worth Rs.45,90,000/- in Bolero jeep. Cash of Rs.86,500/- was found with accused Seema Panchariya. Thereafter, the First Information Report was lodged by Head Constable Deepak Rohakale and on the basis of it offence vide Crime No. 121 of 2017 came to be registered. During the course of the investigation from the arrested persons it was disclosed that, they were taking Ganja packets for sale to various retailers. The statements of accused persons were taken. Name of Balu Phoolmali was taken by accused Mukhtar. Accused Mukhtar's name was taken by accused Guljar Shaikh and accused Pralhad Kate's name was taken by accused Viju Bhandari. Name of present applicant has been disclosed by accused Nos.2 & 6. The charge-sheet does not disclose any recovery from the applicants. The applicants have contended that, except the statements of the co-accused, there is no evidence against them, and therefore on this basis they have prayed for quashment of the proceedings.

5 Heard learned Advocate Mr. S. V. Natu for the applicants and learned Additional Public Prosecutor Mr. A.A. Jagatkar for State in both the matters. Perused the record.

6 The learned Advocate appearing for the applicants submitted that co-accused had similarly preferred Criminal Application No.5975 of 2017 (Guljar Alibhai Shaikh vs. State of Maharashtra) and Criminal Application No.1528 of 2018 (Balu Babu Phoolmali vs. The State of Maharashtra) with Criminal Application No.83 of 2018 (Mukhtar Kadar Shaikh vs. The State of Maharashtra). They came to be allowed by this Court on 21.12.2017 and 24.08.2017 respectively. He has placed the copies of the Judgments on record.

7 Perusal of the charge-sheet would show that, except the statements of the co-accused there is nothing on record. The said statement of the co-accused has been made under Section 27 of the Indian Evidence Act. It can be said to be relevant only in respect of discovery of a fact but it cannot be taken as confession or in any way fastening the liability of the accused – applicants. This Court in the case of *Guljar Alibhai Shaikh* which was in respect of the same charge-sheet has held that, the statement of a co-accused is weak piece of evidence

when it is recorded under Section 67 of NDPS Act. Such statement is inadmissible. It is not the case of the prosecution that on the basis of something discovered by the co-accused anything was found with the present applicants. Under such circumstance, there is absolutely no material which can lead to the conviction of the applicants, and therefore, this is a fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure is required to be invoked in view of the parameters laid down in *State of Haryana and others vs. Ch. Bhajan Lal and others* reported in *AIR 1992 Supreme Court 604*.

8 Therefore, applying the above said principle we find this is a fit case where First Information Report against the applicants, deserves to be quashed and set aside by allowing the applications. Hence, following order.

ORDER

- 1 Both the applications allowed.
- 2 The relief is granted in terms of prayer clause “B”.
- 3 Rule made absolute in those terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

agd