

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

BAIL APPLICATION NO.1175 OF 2020

**ILYAS BADHSAH KHAN
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Faisal F. Shaikh
APP for Respondents/State : Mrs. D.S. Jape
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**CORAM : M.G. SEWLIKAR, J.
DATE : 28.10.2020**

ORDER:-

The applicant is seeking regular bail in connection with Crime No. 3028 of 2020 registered with Chopda Rural Police Station, Taluka Chopda, District Jalgaon for the offences punishable under Sections 8 (c) 20(c), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 188, 269, 270 of I.P.C. and under Section 51 (b) of the Disaster Management Act, 2005 vide Spl. NDPS Case No. 22 of 2020.

2. It is the prosecution case that on 16.05.2020 the informant and others were on the duty of checking the vehicles at Budgaon check-post. They received a tip-off that in one Eicher Truck contraband articles were being transported. They spotted Eicher Truck No.MH-47-AS-0887 which was followed by a motorcycle on which two persons were riding. The vehicle was

interepted. On checking the Eicher Truck, it was found containing wheat bags and beneath the wheat bags there were bags of Ganja weighing 87 kilos. The applicant was the Cleaner on the said truck and driver of the said truck was accused no.1-Ramsevak Yadav. The two persons who were following the truck were Digambar Koli and the name of the other one was Dayaram Pawra. Panchanama in usual manner was prepared. Samples were taken. The applicant and other accused were arrested and offences under the aforesaid sections came to be registered.

3. Heard Shri Faisal Shaikh learned counsel for the applicant and Smt D.S. Jape learned APP for the State.

4. Shri Faisal submitted that the applicant was the Cleaner on the said truck. He submitted that Ganja was loaded in the truck misrepresenting the owner-cum-driver i.e. the accused no.1-Ramsevak Yadav that wheat bags were to be uploaded. He submitted that wheat bags were also found in the truck and beneath the wheat bags there were bags of Ganja. He submitted that this Ganja was loaded at the instance of one Jafar from Mumbai. He submitted that there is nothing on record to show that the applicant had knowledge that the bags contained Ganja. He submitted that owner-cum-driver has been released on bail and on the ground of parity the applicant is also entitled to be released on bail.

5. Smt Jape submitted that Ganja of commercial quantity was loaded in the truck. It would be naive to assume that the applicant was unaware of loading of Ganja in the truck. She submitted that on taking search of accused no.1 cash of Rs.7,000/- was found and on taking search of the applicant cash of Rs.4,000/- was found. She submitted that possession of Ganja was conscious on the part of the applicant no.1 and therefore application deserves to be rejected.

6. On perusal of the investigation papers, it is seen that wheat bags were loaded in the truck and beneath the wheat bags there were gunny bags of Ganjas. The truck was hired by one Jafar Shaikh of Mumbai. The said wheat bags were loaded at the shop of M/s. Maganlal Govindram Agrawal at Chopda. Statements of the said Jafar and any person from the shop of M/s. Maganlal Govindram Agrawal has not been recorded. There is nothing on record to show that the applicant had knowledge that Ganja was being loaded in the truck. The truck did contain wheat bags and beneath the wheat bags there were bags of Ganja. The applicant is a Cleaner. Accused no.1-Ramsevak Yadav, the owner-cum-driver has been released on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) The applicant-Ilyas Khan be released in Crime No. 3028 of 2020 registered with Chopda Rural Police Station, Taluka Chopda, District Jalgaon for the offences punishable under Sections 8 (c) 20(c), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 read with under Section 188, 269, 270 of I.P.C. and under Section 51 (b) of the Disaster Management Act, 2005 vide Spl. NDPS Case No. 22 of 2020 on bail on furnishing PR bond of Rs.15,000/- with one solvent surety in the like amount and on condition that he shall not tamper with the prosecution evidence.

[M.G. SEWLIKAR, J.]