

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

43 ANTICIPATORY BAIL APPLICATION NO.1026 OF 2020

MASOOD KHAN S/O KAMAL KHAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. G.L. Deshpande, Advocate for applicant

Mr. V.M. Kagne, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07th DECEMBER, 2020.

ORDER :

1 Present application has been filed under Section 438 of the Code of Criminal Procedure, 1973. The applicant is apprehending his arrest in connection with Crime No.95/2019 registered with City Police Station, Chalisgaon, Dist. Jalgaon for the offence punishable under Section 8, 20, 22 of Narcotic Drugs and Psychotropic Substances Act and under Section 420, 465 of the Indian Penal Code.

2 Heard learned Advocate Mr. G.L. Deshpande for applicant and learned AGP Mr. V.M. Kagne for respondent/State.

3 It has been vehemently submitted on behalf of the applicant that

the applicant has no nexus with the alleged offence. He has no nexus with the co-accused. Co-accused Shaikh Saeed Shaikh Rafiq has been granted anticipatory bail on 20.09.2019 by learned Sessions Judge, Jalgaon, and therefore, on the ground of parity also the applicant is entitled to get bail. On the merits of the case it is the prosecution story that the informant who is a Police Officer was along with his squad. He has intercepted many vehicles as he claims that he has received certain secret information. He comes with a case that he was there till 1.30 a.m. on 09.03.2019. It is his say that they had stopped two vehicles, one Innova car bearing No.MH-14-AN-6532 and one Mahindra Marazzo bearing No.MH-15-GJ-1761. As per the First Information Report the persons from the Innova car were arrested. They are Shubham Rana, Bhushan Pawar and Ravindra Shinde. The informant says that the persons from Mahindra Marazzo car ran away with the car. They had spotted four persons in the said car. According to the informant, they had seized 593 k.gs. Ganja and six Cell Phones. Now, the charge sheet is also filed and perusal of the charge sheet would make it clear that the physical custody of the applicant is absolutely not required. There is no absconding, yet, he was not arrested by the police persons for the reasons best known to the police. Now, nothing is required to be seized from the applicant, and therefore, he be released on bail.

4 Per contra, the learned APP strongly opposed the application. He contended that though the informant appears to have not noted who were the occupants of Mahindra Marazzo, but he has given the number. Huge quantity of Ganja came to be seized from Innova vehicle. All the procedural formalities have been complied with. There is a connection between accused persons, who have been arrested with the present applicant. It has been transpired during the course of the investigation that the Ganja was purchased from Hyderabad, and therefore, physical custody of the applicant is required to extract from where the Ganja was procured. Though the charge sheet is filed, yet, the investigation can go on under Section 173(8) of the Code of Criminal Procedure, and therefore, the applicant does not deserve any kind of sympathy.

5 At the outset, it can be seen that the charge sheet is filed and it does not say that the Investigating Officer has reserved his right for further investigation under Section 173(8) of Cr.P.C. No doubt, the police can take help of the said section and make further investigation. But as regards the present applicant is concerned, whatever evidence that has been collected and the charge sheet is filed should reflect some such material which would prompt his physical custody. The prosecution story, as it appears from the FIR, is that after the tip was received regarding transportation of narcotic

drugs, the entire raiding party with two panchas went to the spot. They started intercepting vehicles. When they found two cars i.e. Innova and Mahindra Marazzo, at that time, Innova was followed by Marazzo. The Marazzo car was occupied by four persons and the informant says that it was about 1.30 a.m. of 09.03.2019. He says that after it was seen by the occupants from Marazzo that the police have intercepted, the vehicle was taken in high speed. Another team chased them, however, they managed to escape. Interesting point to be noted is that as per the FIR the tip, that was received, was with the vehicle numbers also. It is stated that those persons had filled Ganja in gunny bags and had started from Akola. The place of interception is near Chalisgaon. If along with the number of the vehicle the information was received then why at any earlier point of time those vehicles were not intercepted, is a question. Further, the entire charge sheet does not show as to how the identity of the present applicant came to be revealed as one of the occupants of Mahindra Marazzo at the relevant time. Merely on the basis of statement of co-accused which is inadmissible in nature we cannot say that the present applicant is involved in the case. Now, when the investigation is over and the charge sheet is also filed the physical custody of the applicant is not required.

under Section 299 of Cr.P.C. against this applicant is concerned, it is to be noted that the charge sheet gives only one station diary entry dated 11.05.2019 of Malegaon City Police Station, wherein it is stated that the police persons went to the house of the present applicant and he was not found. It is very much surprising that only on the basis of one such visit, which may be stated that an attempt to arrest the applicant had failed, whether the applicant can be branded as absconding person. Section 299 of Cr.P.C. contemplates that only upon the proof with arrest of the accused is not possible in near future. The procedure laid down under Section 299 of Cr.P.C. is required to be followed. It does not give an authority to Police Officer to file charge sheet contending that it is under Section 299 of Cr.P.C. against a particular accused without giving a proof that such applicant/accused is absconding.

7 Under the above circumstance, when the physical custody of the applicant is not required for the purpose of any investigation he deserves to be released on anticipatory bail. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of present applicant in connection with

Crime No.95/2019 registered with City Police Station, Chalisgaon, Dist. Jalgaon for the offence punishable under Section 8, 20, 22 of Narcotic Drugs and Psychotropic Substances Act and under Section 420, 465 of the Indian Penal Code, he be released on P.R. of Rs.30,000/- with two sureties of Rs.15,000/- each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner and should remain present before the Court for the purpose of trial on the given dates.

(Smt. Vibha Kankanwadi, J.)

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