

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 280/2020.

Shailendra @ Shailesh Rajendra Jaiswal

-VERSUS-

The State of Maharashtra

CRIMINAL APPLICATION [ABA] NO. 281/2020.

Jitendrasingh Surjitsingh Patwa

-VERSUS-

The State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Anil Mardikar, Senior Advocate with Shri A.A.
Dhawas, Advocate for Applicants.
Shri B.M. Lonare, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 14, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Police of Ballarshah Police Station, District Chandrapur registered Crime No. 182/2020 against accused/applicants for commission of offence punishable under Sections 65[a] 83 of the Maharashtra Prohibition Act, and Sections 279 and

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427 of the Indian Penal Code. Since non-bailable offences were registered against both applicants, they apprehend to be arrested in said crime.

3. Applicants urged for pre-arrest protection on the premise of innocence, false implication, inadequacy of evidence, having permanent place of residence etc. Besides that the learned Senior Counsel appearing for applicants submitted that only at the instance of statement of co-accused, applicants have been booked in the offence. According to him applicants were no way concerned with the seizure of illicit liquor, nor they were present at the time of occurrence.

4. The State resisted both applications by filing reply affidavit. Contents of FIR are reiterated. It is added that applicants are main accused at whose behest illicit liquor was transported in Chandrapur District which is a prohibited area. Moreover, learned A.P.P. has pointed out chart containing long list of antecedents against both applicants/accused.

5. After receipt of secret information about transport of illicit liquor in Chandrapur District, police have arranged for raid. At the relevant time they

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noticed that one vehicle bearing registration No. MH 40 BJ 8549 was heading in high speed which did not stopped despite signal. Some how police managed to stop the vehicle and apprehended the driver namely Lomesh Parchake on the spot itself. During search it was found that in the said truck a special arrangement was made to conceal and transport illicit liquor. Police have seized huge quantity of illicit liquor worth Rs.28.95 lakh along with the vehicle. During interrogation, the apprehended accused [driver] disclosed that the illicit liquor was sent by applicant Sonu Jaiswal resident of Wani and it was to be delivered in the hotel owned by the another applicant Munna Patwa.

6. Pertinent to note that having accosted the vehicle around 00.15 hours of 28.02.2020, within 2/3 hours FIR was lodged wherein names of both applicants/accused were disclosed. Learned Senior Counsel argued that beside statement of co-accused there is no other material to connect applicants with the said crime. He has also argued that one cannot take aid of Section 10 of the Evidence Act, however, it would be too premature to appreciate the said

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submission at the time of deciding bail applications.

7. Section 83 of the Maharashtra Prohibition Act fasten a joint liability on the conspirators for which the punishment may extending to 5 years of imprisonment. The driver was mere carrier of the illicit liquor. At this juncture there is no reason to doubt the statement of the driver or reason for him to falsely implicate some body else. Thus, prima facie involvement of both applicants is evident from the first information report itself. The quantity of illicit liquor is huge and had been carried in specially arranged vehicle obviously to parry the authorities.

8. Prosecution has filed a chart showing that applicant Sonu Jaiswal was involved in total 18 offences in the past. Perusal of the chart discloses that almost all the offences were registered under the Maharashtra Prohibition Act, and all were registered during preceding three years. Likewise, another chart pertaining to applicant Patwa discloses that in all 11 offences of similar nature were registered against him over a period of time.

9. The learned Senior Counsel would submit that though there are criminal antecedents, but, that

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cannot be a criteria for rejection of bail. He would submit that it is the duty of the Court to see the existing material against accused while deciding bail applications. In support of said contention he sought to rely on the decision of the Hon'ble Supreme Court in case of **Maulana Mohd. Rashedi .vrs. State of Uttar Pradesh and others (2012) 2 SCC 382**. In the said case the then applicant/accused was arrested approximately 2 years preceding to the order of grant of bail. In said case charge sheet was filed and some material witnesses were examined and at that stage he was enlarged on bail. In such peculiar facts, the Hon'ble Supreme Court has upheld the observations of High Court that merely on the basis of criminal antecedents, the claim of accused for bail cannot be rejected. There can be no dispute about the said proposition of law, however, those observations were relating to regular bail and in above said factual position.

10. True mere criminal antecedents are not enough to curtail the liberty, but, certainly that has to be taken into account along with other circumstances, while deciding the bail. Pertinent to note that Section

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438(ii) of the Code of Criminal Procedure specifically refers the factor of antecedents which has to be taken into account while considering the entitlement for pre arrest bail. That being so, one cannot side line the long list of antecedents, particularly at the stage of deciding the bail under Section 438 of the Code of Criminal Procedure.

11. In short, at first possible opportunity names of both applicants were disclosed. Though nothing is to be seized at the hands of applicants, however, the Court cannot predict in which direction their interrogation would assist the investigating agency while carrying out the investigation. The long list of continuous registration of offences under the Prohibition Act is a valid circumstance which prima facie supports the allegations leveled against applicants. The contents of FIR shows that at the behest of both applicants, the illicit liquor was transported, therefore, to unveil the modus and other related things their interrogation is necessary.

12. Though it is argued that at the time of raid, applicant Patwa was some where else, that does not have any bearing as his name was disclosed in the

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FIR itself. Moreover, it is not the case of the prosecution that applicant Patwa was personally present on the spot. On the other hand, it is the prosecution case that goods were to be delivered at the hotel of applicant Patwa for which his presence in the hotel is not necessary.

13. Having regard to the allegations leveled against applicants, their prime role in the transportation of huge quantity of liquor and particularly considering their antecedents, they are not entitled to pre-arrest bail, which is an extra ordinary remedy. In view of above, both applications does not carry any merit, hence they stand rejected.

14. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Rgd.

**Rakesh
Dhuriya**
Digitally signed
by Rakesh
Dhuriya
Date: 2020.08.14
17:52:55 +0530