

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

BAIL APPLICATION NO.99 OF 2021

Nagendra Babu Salu Jamelli,
Age-35 years, Occu. Labour,
R/o. Choudhary, Lothugedda,
Annavaram, Vishakapatnam,
Andhra Pradesh-531111.

...Applicant

Versus

The State of Maharashtra
Through Paranda Police Station,
Dist. Osmanabad.

...Respondent

...

Mr. Sachin S. Deshmukh, Advocate for the applicant.
Mr. S.B. Narwade, APP for the respondent-State.

...
**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 01st MARCH, 2021**

ORDER:-

1. The applicant has been arrested in connection with Crime No.254 of 2020 dated 13.11.2020 registered with Paranda Police Station, District Osmanabad, for the offence punishable under Section 20 (b) of Narcotic Drugs and Psychotropic Substances Act, 1985. He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. Sachin Deshmukh for the applicant and the learned APP Mr. Narwade for the respondent-State.

3. It has been submitted on behalf of the applicant that the applicant is not the resident of Wangi, Taluka Bhoom.

He is the maternal uncle of co-accused Anna Ramdas Pawar. The applicant is a resident of Chowdurai village, Lothugedda, Annavaram, Vishakapatnam, Andhra Pradesh State. He had come to meet his nephew on that day. Nothing has been recovered at the instance of the present applicant. He is not the owner of the car or the house. Merely because he was present at the spot when the raid was conducted, he has been arrested. He has not committed any offence and therefore, he deserves to be released on bail.

4. The learned APP strongly opposed the application and submitted that information was received that the police team from Bhoom Police Station was visiting Police Station Paranda in connection with Crime No.149 of 2020 registered for the offence punishable under Section 20 (b) of Narcotic Drugs and Psychotropic Substances Act on 12.11.2020. Informant, A.S.I. Rajkumar Narayan Sasane was directed to help the said police team from Bhoom Police Station. Therefore, the entire police staff headed by P.I. R.B. Khannad went to search absconding accused Shubhash Anna Pawar. At that moment, the informant received secret information that there is ganja sealed in Innova vehicle as well as pick up van parked in front of the house of Subhash Anna Pawar at Wangi Khurd. After making arrangements for the raid, all of them went there. They found Innova vehicle bearing No. MH-25-AK-1777. They also found a person near the vehicle. He gave his

name as Amol Subhash Pawar. Thereafter, after giving an opportunity to him to search, police persons explained him the reason for raid and asked him to allow them to search the vehicle. Thereafter, the Innova vehicle was searched wherein they had found one white colour gunny bag containing Khaki colour boxes. One box was opened and it was found that it is filled with ganja. The ganja was weighed and it was found to be 10 kg and 80 grams. Thereafter, they went to the southern side of the bungalow and found one white colour goods carrier. Two persons were sitting in the pick up van. One was unable to speak Marathi but could speak only Telugu. The other person was Anna Ramdas Paware and he told police that the person talking in Telugu is his maternal uncle i.e. present applicant. From the said pick up van, police found ganja in white gunny bag weighing 6 kg. The search of the house was also taken and in a room they found two boxes containing ganja worth 48 kg 500 grams. They found a lady in the house who disclosed her name as Shobha Subhash Pawar. She was unable to state from where her husband Subhash Pawar and brother-in-law Ramdas Pawar had brought the ganja. The ganja was tested in the sample kit and it was found that it is ganja. Thereafter, the panchnama was drawn by taking sample of all the accused persons and the ganja was brought to the police station and thereafter, the report has been lodged. The learned APP further submitted that the applicant is from another state and

he will not be available for the investigation as well as it would be problematic, if he does not remain present before the Court when the trial will take place. Two more accused persons are absconding. The investigation is still incomplete and therefore, he does not deserve to be released on bail.

5. As aforesaid, the entire FIR has been reproduced earlier, therefore, it need not be repeated again, however, it can be said that as regards role attributed to the present applicant is concerned, it is stated that he was found in the pick up van. The FIR shows that initially search with the Innova vehicle has been done and thereafter, the police party went to the southern side of the bungalow where the white pick up van was stationed. According to the informant, two persons were sitting in the pick up van itself. He has not stated that pick up van was about to leave the place. It is hard to believe that when the search of the Innova vehicle was going on, these two persons would have been sitting in the pick up van itself. What is required to be proved by the prosecution is "conscious possession" of the applicant. As regards the pick up van is concerned, the white colour gunny bag containing ganja was found in the back side portion of the pick up van. The said vehicle is not belonging to the present applicant. The said bungalow also does not belong to him. Therefore, when conscious possession is required to be proved and the narcotic drug is found at the rear side of the vehicle, then definitely

case is made out for grant of bail. There is no bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, to grant bail to the applicant. It will not be out of place to mention here that accused Amol Subhash Pawar, who was found near the Innova vehicle, has been granted bail by this Court on 04.01.2021 and therefore, present applicant also deserves to be released on bail.

6. Information was sought from the prosecution, as to whether the applicant has any criminal antecedents. It appears that the certificate has been called from concerned police station from Chintapalli Mandal, Vishakhapatnam District, Andhra Pradesh State, stating that no criminal offence has been registered with that police station against the present applicant. Merely because the applicant is not resident of Maharashtra State, his bail application cannot be rejected. Hence, the following order is passed:

ORDER

- I) Application is hereby allowed.
- II) The applicant Nagendra Babu Salu Jamelli in connection with Crime No.254 of 2020 registered with Paranda Police Station, District Osmanabad for the offences punishable under Section 20 (b) of Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on furnishing personal bond of Rs. 15,000/- (fifteen thousand) with one surety of the like amount on following conditions:

(6)

- a) The applicant shall not tamper with the prosecution evidence in any manner.
 - b) The applicant shall make himself available as and when required by the investigating officer in carrying out further investigation into the crime, if any.
- III) Application is disposed of.

(SMT. VIBHA KANKANWADI, J.)