

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

BAIL APPLICATION NO.138 OF 2021

1) Ashabai w/o Vishnu Makale
and Anr. = **APPLICANTS**
VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.RS Deshmukh, Sr.Counsel i/by Mr. DR Deshmukh,
Advocate for Applicants;

Mr. SY Mahajan, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 23rd February, 2021.

PRONOUNCED ON: 09th MARCH, 2021

PER COURT :-

1. Present applicants have been arrested in connection with CR No.314/2020 registered at Harsool police station, District Aurangabad for the offences punishable under Sections 20 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act). They have filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. It has been vehemently submitted on behalf of the applicants that FIR has been lodged by Police Sub-Inspector – Vitthal Dinkar Chaskar of Crime Branch, Aurangabad. He states that Police

Inspector — Anil Gaikwad had received secret information that narcotic drugs would be transported from Innova Car bearing registration No.MH-03-BC-2713 from Harsul Tea Point to Mayur Park road. Therefore, after getting permission from the superiors and making an entry in the Station Diary, they went to the spot. They had intercepted the said vehicle. At that time, two male persons got down from the vehicle and started to run. But, they were chased and caught. The applicants, who are the ladies, aged 70 and 75 years respectively, were sitting in the car itself. Search of the car was taken and it is stated that, in all 49 bags of *Ganja*, containing 106 kg and 300 grams, worth Rs.5,31,500/- was found. Now, the investigation is over and charge sheet is filed. Most of the witnesses are police witnesses. What would be required for the offence to be proved against the present applicants is the conscious possession. Taking into consideration the ages of the applicants, it is hard to believe that they would have been involved in the present crime. Whatever evidence has been collected is specifically against the two male persons. Though one of them appears to be son of present applicant No.2; yet her own knowledge, about the fact that the vehicle, in which she was travelling, was having such narcotic drugs, is important and, therefore, now physical custody of the applicants is not required. Taking into consideration their ages, they deserve to be released on bail.

4. The learned APP strongly objected the application and submitted that the ages of the applicants need not be considered in view of the fact that huge consignment of narcotic drugs has been found in the Innova car, which has no dicky and, therefore, definitely they had knowledge about the articles in the vehicle. The vehicle had, in fact, gone to Hyderabad and from Hyderabad it had come to Aurangabad. The Google Map journey of the vehicle and also the toll tax payment, would show as to how the journey was completed. The applicants have committed serious offence, which is not only affecting the young generation, but is also affecting the Indian economy and, therefore, they do not deserve any kind of sympathy.

5. At the outset, it is to be noted that the the investigation is complete and charge sheet is filed. The applicants are in jail since 9.10.2020. The vehicle was intercepted at 2.35 am on 1.10.2020. Therefore, it is obvious that, except the police persons, who were part of raiding party and the panchas, there were no other independent witnesses. Now, the sample has been taken. Inventory has been done. Report of Chemical Analyser has been taken. Under such circumstance, further physical custody of the applicants is no longer required. Taking into consideration the ages of the applicants, i.e. 70 and 75 years respectively, and the fact that they were not at the Driver's seat and had not even tried to flee away from the vehicle even after the vehicle was

intercepted, they deserve to be released on bail. It would take long time for their trial to stand. Stringent conditions are required to be imposed. With these observations, following order is passed,

ORDER

i. The Bail Application stands allowed.

ii. The applicants – 1) Ashabai w/o Vishnu Makale and 2) Ramabai w/o Ambu Indrekar, be released on bail in connection with CR No.314/2020 dated 1.10.2020 registered at Harsul police station, District Aurangabad for the offences punishable under Sections 20 and 29 of the NDPS Act, on PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

iii. The applicants shall not indulge in any criminal activity nor shall they tamper with the prosecution evidence in any manner.

iv. The applicants shall comply with the requirements set out in Para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v. Bail before the trial court.

**(SMT. VIBHA KANKANWADI)
JUDGE**