

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.163 OF 2021

NANDKISHOR S/O DWARKALAL JAISWAL
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. S. Jadhavar h/f Mr. S. S. Rathi, Advocate for applicant.
Mr. M. M. Nerlikar, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 17th March, 2021

Pronounced on : 22nd April, 2021

ORDER :-

1. Applicant came to be arrested on 19.01.2021 in connection with Crime No.247 of 2020 by Hatta Police Station, Hatta, Dist. Hingoli for the offences punishable under section 307, 353, 188, 279, 269, 270, 271 of Indian Penal Code; Section 65 (E) of Maharashtra Prohibition Act and Section 51 (b) of Disaster Management Act, 2005. Present application has been filed under Section 439 of Code of Criminal Procedure for bail.
2. Heard learned Advocate Mr. S. S. Jadhavar holding for learned Advocate Mr. S. S. Rathi for the applicant and learned APP Mr. M. M. Nerlikar for respondent- State.
3. Learned Advocate for applicant has submitted that perusal of First Information Report lodged by one Police Constable Ganesh Lekule

attached to Hatta Police Station would show that Police had allegedly received secret information about the name of present applicant as well as his car number and the fact that he would be transporting illicit liquor. He states that applicant was intercepted and he was asked his name and informed as to why he has been asked to stop. In spite of all the police persons present there, informant says that applicant managed to run away. This appears to be concocted story. The facts are exaggerated and a picture has been tried to be painted that applicant had tried to run his vehicle on the informant in order to kill him. It would have been easily possible for the police to apprehend applicant at that spot itself. Even after the arrest of the applicant, no incriminating article has been seized from him. It is alleged that the objectionable bottles have been seized at the spot itself. Further physical custody of the applicant is not required. He deserves to be released on bail.

4. Learned APP submitted that there is ample evidence against applicant. Applicant is *prima facie* involved in the case. The informant has specifically stated in his FIR that applicant was intercepted and then when he was asked to open the dicky of the vehicle, applicant drove the vehicle rashly and tried to run it from the person of informant. Informant jumped and, therefore, was saved. But later on after some chase, applicant left the vehicle at the spot and fled away. Applicant is

involved in many such cases of illegal transport of liquor. Possibility of commission of similar crime in future by him cannot be ruled out. Investigation is still pending. Therefore, applicant does not deserve to be released on bail.

5. At the outset, it is to be noted that the FIR has been lodged by a police constable and he states that they had received information with specific name, number of vehicle and transportation of liquor in illegal manner. Therefore, while intercepting applicant, all precautions would have been taken. Informant states that after PSI More disclosed their intention to check the vehicle and asked applicant to open the dicky, More, Sarode and two panchas went towards back side of the vehicle. Surprising part is that informant states that applicant was still sitting at the driver's seat. He then states that when applicant closed the glass of the window of driver's seat, he became suspicious. Applicant started the vehicle and started to go. He was asked to stop the vehicle by More and others, but then applicant tried to rush the vehicle on the person of informant. Informant jumped on other side, thereby saving him and applicant managed to flee away. Informant then says that they had chased applicant till Darephah road, but then applicant lost control over his vehicle, which went out of road and then by taking advantage of darkness, he ran away by leaving the vehicle at that place.

6. The story in the FIR regarding attempt to kill is concerned, it is required to be seen as to whether applicant had intention to kill. It might occur that in an attempt to flee away, while taking the vehicle on road, he might have come towards informant. Even after taking the story in the FIR as it is, the further physical custody of the applicant is not required. Pendency of prohibition cases against applicant cannot be a bar for not considering this application. He deserves to be released on bail, however, taking into consideration the allegations in the FIR, more stringent conditions are required to be imposed. Hence, the following order :-

ORDER

- 1) Application stands allowed.
- 2) Applicant - Nandkishor Dwarkalal Jaiswal, who has been arrested in connection with Crime No.247 of 2020, registered with Hatta Police Station, Dist. Hingoli, for the offences punishable under Sections 307, 353, 188, 279, 269, 270, 271 of Indian Penal Code and Section 65(E) of Maharashtra Prohibition Act and Section 51(b) of Disaster Management Act, 2005, be released on P.R. of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- 3) Applicant shall attend concerned police station on every Monday, Wednesday and Saturday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

- 4) Applicant shall co-operate with investigation.
- 5) Applicant shall not involve himself in any criminal activity.
- 6) If applicant is found involved in any similar criminal activity or any criminal activity, then prosecution is at liberty to file an application for cancellation of bail under Section 439 (2) of the Code of Criminal Procedure.

[SMT. VIBHA KANKANWADI, J.]

scm