

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.195 OF 2021

Amol s/o Ashok Bhalerao,
Age 22 years, Occupation Labour,
R/o Misarwadi, Behind Ashirwad
Building, Aurangabad.

...Applicant

VERSUS

The State of Maharashtra,
(At the instance of CIDCO
Police Station).

...Respondent

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Advocate for Applicant : Mr. A. K. Bhosale
APP for Respondent-State : Mr. A. M. Phule

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WITH
BAIL APPLICATION NO.208 OF 2021

Sagar s/o Chhagan Khandagale,
Age 25 years, Occupation Labour,
R/o Sunny Centre, Krishna Nagar,
Pisadevi Road, Aurangabad.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Inspector,
CIDCO Police Station,
Tal and Dist. Aurangabad.

...Respondent

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Advocate for Applicant : Mr. D. P. Palodkar
APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 17-03-2021.

ORDER :

1. Both the applications have been filed by accused No.1 and 2 who came to be arrested on 14-03-2020 in connection with Crime No.141 of 2020, registered with CIDCO Police Station, Aurangabad Dist. Aurangabad, for the offences punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act" for the sake of brevity), they have filed present application under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. K. Bhosale, learned Advocate Mr. D. P. Palodkar for applicants, and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

3. It has been vehemently submitted on behalf of both the applicants that they had approached this Court by filing Bail Application No.849 of 2020 for regular bail, however it came to be rejected on 30-09-2020. They had filed Special Leave to Appeal (Criminal) No.4994 of 2020 before Hon'ble Apex Court. While dismissing the said application Hon'bel Apex Court had given liberty

to both of them to approach the Trial Court for bail after filing of the charge-sheet and, therefore, after filing of charge-sheet they have filed such application below Exhibit 22, however that came to be rejected by the learned Special Judge under NDPS Act on 24-12-2020 and 04-12-2020 respectively, thereafter they have approached this Court.

4. It has been vehemently submitted on behalf of the applicants that the prosecution had come with a case that the present applicants were found possessing 42 Kilogram of 'Ganja' worth Rs.2,10,000/- transporting illegally in car. Accused No.3 was granted bail by learned Special Judge, Aurangabad on 27-07-2020. When co-accused has been granted bail, the present applicants are also entitled to get bail on the ground of parity. The applicants are in jail for a considerable time. There is no progress in the case due to COVID-19 pandemic situation. They are ready to furnish bail. The car was not belonging to the present applicants. According to applicant Sagar that car was parked opposite to his house and when police asked about it, he disclosed that the car does not belong to him, but police did not believe it. Even if we consider the contents of the First Information Report it says that the applicant was only

travelling in the vehicle, it cannot be said to be a conscious possession, provisions of Section 20 of the NDPS Act will not be applicable. The point of conscious possession is also raised by applicant Amol. It was therefore submitted on behalf of both the applicants that since it will take much time for their trial to stand, so also some of the co-accused are shown as absconding, they need not be kept behind bar.

5. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that as per the First Information Report, such huge quantity of 'Ganja' was found in the car and not in the dickey. Under such circumstance, prima facie there is fact on record to believe that it was a conscious possession of the applicants. It is for them to prove / disprove that it was not their conscious possession. There is no legal impediment or lacuna left by the prosecution as all the mandatory requirements are fulfilled. When the young generation is affected by such Narcotic Drugs and the applicants were indulging themselves in such serious offence, they do not deserve any sympathy.

6. At the outset, it can be said that this Court had already rejected the application for regular bail on 30-09-2020. It also

appears that the charge-sheet was filed on 02-05-2020 before the learned Special Judge. Before the Hon'bel Apex Court also it was pointed out that the charge-sheet is filed, but then it was stated that charges are yet to be framed. Liberty was granted to the present applicants to file appropriate application after the matter is taken up at the stage of framing of charge. It was also observed that,

"The application for bail so preferred shall be considered purely on its own merits and this Court (Apex Court) shall not be taken to have made any reflection on the merits of the matter."

Therefore, merely because the matter was taken up for framing charge and the liberty was given, it was not mandatory for the Special Judge to allow the bail application, it should have been considered on its own merits, accordingly it is considered so. It appears that accused No.3 has been granted bail. Accused No.3 Ashok Hemaji Bahlaraao is stated to be the owner of the car. Charge-sheet was filed against him under Section 299 of Code of Criminal Procedure. He appears to be the father of applicant/ accused No.1 Amol Bhalerao. Accused No.3 was not present in the car when it was intercepted and the Narcotic Drugs was found in it. Under those facts he appears to have been released on bail. Certainly the

ground of parity is not available for the present applicants who were in the car at the relevant time.

7. The contents of the First Information Report as well as the charge-sheet, especially the panchanama and the statement of the witnesses under Section 161 of Code of Criminal Procedure would disclose that when the police party had received secret information and it was then intercepted by the raiding party, somehow the car was forcibly taken ahead, it was chased and then both the applicants came to be arrested on the spot. At this stage, the applicants are not denying their arrest at the relevant time and at the relevant place. Further it shows that two plastic gunny bags were found in the car which were containing about 42 Kilogram of 'Ganja'. It is not the case of the prosecution at this stage that these two gunny bags were in the dicky of the car. The 'Ganja' produces strong smell and it is hard to believe that the applicants could not have noticed the said strong smell. It is on the point of conscious possession that this aspect is relevant, after all it is for the prosecution to establish so also for the accused to disprove the point of conscious possession. At this stage there is evidence against the present applicants, they were found possessing 42 Kilogram of 'Ganja'. The offence in

respect of Narcotic Drugs can be said to be an offence against State taking into consideration the fact that it is not only hazardous to the health of the young generation but also affects the economy of the country. Therefore, when evidence is strong, there is no necessity to take any sympathetic approach to the applicants. Hence, both the applications stand rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-