

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.268 OF 2021

- 1) Rahul s/o Nilkant Pawar,
Age 24 years, Occupation Labour,
R/o Malegaon Tanda Tq. Aurad
Dist. Bidar (Karnataka State)
- 2) Satish s/o Raghunath Jadhav,
Age 23 years, Occupation Education
and Labour,
R/o Malegaon Tanda Tq. Aurad
Dist. Bidar (Karnataka State)
- 3) Somnath s/o Shivaji Jadhav,
Age 21 years, Occupation Labour,
R/o Malegaon Tanda Tq. Aurad
Dist. Bidar (Karnataka State)

...Applicants

VERSUS

The State of Maharashtra,
Through Investigation Officer,
(In Crime No.148 of 2020, registered
with Waadhone (Bk.) Police Station
Tq. Udgir Dist. Latur.

...Respondent

.....
Advocate for Applicants : Mr. U. L. Momale
APP for Respondent-State : Mr. S. B. Narwade
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 29-04-2021.

ORDER :

1. Present applicants have been arrested on 08-10-2020, by
Wadhone (Bk) Police Station Tq. Udgir Dist. Latur, in Crime No.148 of

2020, dated 08-10-2020, for the offence punishable under Section 20 (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'). Present application has been filed by them under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. U. L. Momale for applicants and learned Additional Public Prosecutor Mr. S. B. Nawade for respondent-State.

3. The learned Advocate appearing for the applicants has submitted that there is no direct or indirect evidence against the present applicants and they have been falsely implicated. It has been submitted that as per the provisions of Section 2 (iii) (b) of NDPS Act, cannabis means Ganja, that is, the flowering and fruiting of cannabis by whatever names that may be known or designated. The prosecution has not mentioned weight of the tops and use of the size of the cannabis. There is nothing on record to show that the commercial quantity of cannabis has been seized from the present applicants. The alleged incident is shown to have occurred at 05.00 p.m. and the complaint has been registered at about 11.47 p.m., and therefore, there is no inordinate delay in lodging report which is not explained by the police officer. The mandatory provisions have

not been followed, and therefore, the applicants deserve to be released on bail. Learned Advocate for the applicants has pointed out that the investigation is complete and charge-sheet is filed, on that count also the further physical custody of the applicants is not required. They are ready to abide by the terms of the bail.

4. Per contra, learned Additional Public Prosecutor strongly opposed the application and submitted that road patrolling was going on by the police staff and they found one Bolero jeep in suspicious manner. They found two persons were sitting in the said Bolero jeep. In the jeep at the backside they found one white pesticide gunny bag. When the jeep driver was asked, as to what is there in the gunny bag ? He told that, it is 'Ganja'. The information was then supplied to ASI and further police staff came to the spot. They found one more person was present there in the jeep. The gunny bag was searched. In all 176 kilo 130 grams of Ganja worth Rs.17,61,300/- was seized. It is stated that in all nine gunny bags were dumped in the jeep. The present applicants were arrested from the said spot. Though the investigation is complete, the offence that is committed by the present applicants is serious, and therefore, they do not deserve to be released on bail.

5. As aforesaid, the part of the contents of the First Information Report are already reflected, and therefore, they are not repeated. Police Head Constable Ashok Malwade attached to Wadwana Police Station has given the First Information Report. It appears that they were conducting the patrolling, and on suspicion, they had intercepted the Bolero jeep. In all nine gunny bags have been found in the Bolero jeep. The structure of the jeep is such that it has no separate dickey. Under such circumstance, it is hard to believe that the occupants were not having any idea as to what material is being transported when that substance has such a strong smell. 176 kilo 130 gram of Ganja is a huge quantity. The charge-sheet would show that almost all the formalities have been complied. Statements of the witnesses, though they are the raiding party members who were the only persons who could be present at that spot, are consistent enough. So also photographs have been taken which were taken at the spot itself. The applicants are not denying their arrest at the said spot. The samples were taken and then they were sent to Chemical Analysis. The report of the Chemical Analysis states that Exhibit 1 to 9 are 'Ganja' which falls under the definition of 2 (iii) (B) of NDPS Act. At the outset, there can be no other

opinion that the Narcotic Drugs is menace to the society and it is affecting the general health of public, especially the young generation. Addiction to the such Narcotic Drugs is hazardous and, therefore, whoever is involved in manufacture, distribution and sale as well as consumption, will have to be dealt with sternly. The entire young generation is affected and, therefore, they deserve no sympathy at all. No case is made out to grant bail to the applicant taking into consideration the seriousness of the offence, the quantity of the Ganja that is seized, they are not entitled for getting the bail. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-