

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.277 OF 2021

SWAPNIL S/O ANNASAHEB KAWADE
VERSUS
STATE OF MAHARASHTRA

...
Mr. S. V. Natu, Advocate for applicant.
Mr. A. M. Phule, APP for the respondent – State.

...
CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 06-04-2021
Pronounced on : 27-04-2021

ORDER :-

. Present applicant has been arrested in connection with Crime No.07 of 2019 dated 02.02.2019 registered with Ashwi Police Station, Tq. Sangamner, Dist. Ahmednagar for the offences punishable under Section 22(g) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'). He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. V. Natu for the applicant and learned APP Mr. A. M. Phule for the respondent - State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that the investigation is complete and

charge-sheet is filed. Therefore, his further physical custody is not required for the purpose of investigation. All the co-accused have been released on regular bail by this Court on 07.09.2020, 26.11.2019, 16.07.2020 and 07.01.2020 passed in Bail Application Nos.872 of 2020, 1177 of 2019, 446 of 2020 and 1494 of 2020. Perusal of the FIR lodged by Police Naik Sanjay Late attached to Ashwi Police Station would show that they had received a secret information stating that narcotic drug is being transported from a white Creta Car bearing number MH-14-GH-9925. The car was tried to be intercepted by the raiding party, however, it is stated that the driver managed to take the car away from the raiding party, but then it was found parked in damaged condition near Amreshwar Mahadev Mandir. It is stated that the said car was brought to police station and then the panchanama was carried out within the premises of the police station and it is stated that narcotic drug was found in 11 gunny bags of 177.4 Kgs valuing Rs.8,85,500/- and, therefore, the FIR was lodged against the driver – Ganesh Nivrutti Lonari and the owner of the car. Perusal of the charge-sheet would show that at one place, the prosecution contends that one Seema @ Gulabai Raju Pancharia is the owner of the said car and at another place on the basis of statement of one Rangnath Motiram Thombre, who appears to be a person dealing in sale and purchase of car, the present applicant is

stated to be the registered owner of the car as per the record of Regional Transport Office (for short 'RTO'). In fact, the present applicant has no connection with the crime. He was not present in the car. Nothing has been recovered at his instance. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP has strongly opposed the application submitting that the present applicant is the owner of the car as per the RTO record. Huge amount of narcotic drug has been seized. The CA report has been filed which shows that the article that has been seized is *Ganja*. The quantity that has been seized clearly indicates that it was for commercial purpose and, therefore, the applicant need not be released on bail.

5. Perusal of the FIR would show that the name of the present applicant is not appearing in the FIR. It is also surprising to note that when the car was found, it is stated that Police Constable Shengale, Gambhire and other police persons brought the said Creta car and one person. That person had disclosed his name as Ganesh Nivrutti Lonari, who is stated to be the driver of the Creta Car. It is not stated in the FIR as to what information was gathered from said Ganesh Lonari and as to who is the owner of the said car. It is not mentioned as to whether the

papers of the car were found in the car itself or not. No offence under Motor Vehicles Act has been invoked. However, FIR is stated to be registered against said Ganesh Lonari as well as the owner of the car, whose name is not disclosed.

6. During the investigation, it appears that various persons have been interrogated from co-accused Naresh Ahire. It is stated that certain amount of narcotic drug has been seized. When the investigation is made in respect of the owner of the car, statement of said Rangnath Motiram Thombre has been recorded. On 07.03.2019, his statement has been recorded under Section 164(5) of the Code of Criminal Procedure by the learned Magistrate as well as it appears that his statement under Section 161 of the Code of Criminal Procedure has also been recorded. There appears to be very much difference between these two statements. In his statement under Section 164(5) of the Code of Criminal Procedure, the said Rangnath Thombre has given only three lines statement. It is stated that he was given cash of Rs.9,00,000/- by present applicant for purchase of the said car on 20.02.2019 and thereafter, he had given NOC from Shrirampur RTO. He received remaining amount of Rs.2,50,000/- in cash. However, in his statement under Section 161 of the Code of Criminal Procedure, he has given a long story stating that one Bunty Pancharia had gone to his office in

April, 2018 and wanted to purchase an old Scorpio. He had decided to purchase a Scorpio for Rs.6,80,000/- and then he gave amount of Rs.5,00,000/- in cash to Rangnath Thombre. He then says that for NOC, one photocopy of Aadhar card in the name of Aasha Ganesh Rakshe has been given by him and he had taken the NOC from Shrirampur RTO and thereafter, received remaining amount of Rs.1,80,000/-. Thereafter, he says that one Savleram Aabaji Naik was the owner of Hyundai Creta Car bearing No.MH-14-GH-9925 i.e. the car in the present case and said Savleram requested this Rangnath Thombre to look for customer for his Creta car. Seema @ Gulabai Pancharia with three persons had gone to Rangnath's office on 20.01.2019 and decided to purchase the said Creta Car. The amount was settled at Rs.11,50,000/-. Said Rangnath Thombre accepted amount of Rs.9,00,000/- from Gulabai and gave possession of the Creta Car to Gulabai. Thereafter, he had contacted Gulabai for remaining payment and NOC. Gulabai had forwarded photocopy of Aadhar Card of Swapnil Annasaheb Kawade to said Rangnath on 22.01.2019. Thereafter this Rangnath had taken the NOC from Pimpri-Chinchwad RTO on 15.02.2019 in the name of applicant and gave it to a person who was sent by Gulabai Pancharia. Even at this *prima facie* stage, if we are supposed to consider the statement of this witness which is the only piece of evidence against the applicant, then it

appears that it is self explanatory of the illegal activities those appear to have been carried out by such witness. It was, therefore, specifically asked to learned APP as to whether there is a practice of the RTO office to accept photocopies of Aadhar Card for giving NOC. It was answered that there is no such practice. Then the question comes as to how the two transactions in this case had taken place on the basis of the photocopies of the Aadhar card of some other person. From the part of the statement, it can be seen that on the day when alleged contract of sale had taken place in respect of movable property that is car, certain amount has been accepted by this person. That itself amounts to transfer of the ownership of that movable property as per the Indian Contract Act. Still, when it requires that there should be a legal sanctity for that transaction and as per the Motor Vehicles Act, there should be a transfer in the name of the purchaser, the procedure has been laid down. Rangnath Thombre claims himself to be a person dealing in such sale and purchase of old vehicles, but he is doing such transactions by taking lakhs of rupees by cash which itself is objectionable. He has not produced any document supporting his statement before the police. Merely because said co-accused Gulabai had given photocopy of the Aadhar card of the present applicant and on the basis of such impermissible document, the NOC has been issued by the transport

authority, the applicant cannot be said to be connected to the crime and, therefore, he deserves to be released on bail. Nothing has been recovered at his instance and the entire investigation is complete. It would take long time to stand his trial and, therefore, he deserves bail. So also, he deserves bail on the ground of parity, as major co-accused persons have been released on bail. Might be their role is different, still taking into consideration the only piece of evidence against the present applicant which has been discussed earlier, he need not be kept behind bars. Hence, the following order :-

ORDER

- 1) Application stands allowed.
- 2) Applicant – Swapnil Annasaheb Kawade, who has been arrested in connection with Crime No.07 of 2019 registered with Ashwi Police Station, Tq. Sangamner, Dist. Ahmednagar, for the offences punishable under Sections 22(g) and 25 of the NDPS Act, be released on P .R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- 3) He shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall co-operate with investigation.
- 5) He shall not involve himself in any criminal activity.
- 6) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]