

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 336 OF 2021

Shaikh Yusuf Shaikh Musa

Applicant

Versus

The State of Maharashtra

Respondent

Mr. Siddiqui Sohail E., Advocate for the applicant.

Mr. R.V. Dasalkar, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 29th June, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure.

2. The applicant is accused of committing offence under Sections 8, 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is alleged that on 7th June, 2020, the police received information that the applicant was carrying *ganja* in the Car bearing No. MH 12 KL 5169. When this car was intercepted and search was undertaken, *ganja* weighing 33.858kg worth Rs.1,69,290/- was found in the car. Accordingly, panchanama was

drawn, samples were taken and referred to the Chemical Analyser for analysis. As per police record, the applicant was arrested on 7th August, 2020. This fact is revealed from the charge-sheet. During investigation it was found that accused Nos. 2 and 3 had gone to purchase the *ganja* from accused No. 4. Accused No. 4 is absconding. At that time, applicant was driving the car. After completion of investigation, charge-sheet came to be filed.

3. Shri Siddiqui, learned counsel for the applicant submitted that applicant was only driver of the vehicle. He had no role to play in the alleged offence. He submitted that the applicant was not in conscious possession of *ganja*. Charge-sheet shows that accused Nos. 2 and 3 had gone to purchase *ganja* and the applicant was sitting in the car. He was not aware of the fact that accused Nos. 2 and 3 had purchased *ganja* and deposited in the car. He submitted that the applicant is not the owner of the vehicle. As per the charge-sheet, accused No. 2 is the owner of the vehicle. He submitted that this clearly shows that applicant was not in conscious possession of *ganja*. He, therefore, prayed for releasing applicant on bail.

4. Learned APP submitted that the applicant was in

conscious possession of *ganja*. He was also accompanying accused Nos. 2 and 3 while *ganja* was being purchased. He submitted that the role of applicant in procuring *ganja* shows that he was in conscious possession of *ganja*. Learned APP further submitted that applicant is the history sheeter. Offence under Section 379 of the Indian Penal Code is registered against him. He, therefore, prayed for rejection of the application.

5. From the charge-sheet, it appears that accused No. 2 is the owner of the vehicle. Nothing is pointed out by the parties indicating that any third person is the owner of the vehicle. Charge-sheet, shows that accused Nos. 2 and 3 had gone to purchase *ganja* from accused No. 4. Learned APP could not point out anything to show that applicant was accompanying accused No. 2 and 3 while purchasing *ganja*. Therefore, at this stage, it appears that the applicant was not in conscious possession of *ganja*. Learned counsel Shri Siddique submitted that the role of accused Nos. 2 and 3 is more serious than the applicant. They had gone to purchase *ganja* and they have been released by the Sessions Court on bail. On the ground of parity, applicant is entitled to be released on bail. In view of this, I am inclined to release the applicant on bail. Hence the

following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand only) with one solvent surety in the like amount in connection with Crime No. 825/2020 registered with MIDC Police Station, Dist. Jalgaon, for the offences punishable under Sections 8, 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- iii) These observations are made only for disposal of this application. The Trial Court shall not get influenced by these observations during trial.

(M. G. SEWLIKAR)
Judge

dyb