

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

BAIL APPLICATION NO. 522 OF 2021

Muktar Abdul Rahim Patel,
Age : 28 years, Occu. Driver,
R/o. At Post Lohara, Tq. Balapur,
Dist. Akola.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. K. M. More, Advocate for the applicant
Mr. V. M. Kagne, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 21st August, 2021
DATE OF PRONOUNCING THE ORDER : 24th August, 2021

PER COURT : -

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of bail in connection with Crime No. 1024 of 2020, registered with MIDC Police Station, District Jalgaon, for the offences punishable under Sections 8, 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”).

2. It is the prosecution case that on 25.08.2020, the informant namely, Police Sub-Inspector – Vishal Nago Sonavane, received information through informer that contraband cannabis (ganja) is being transported through a truck bearing registration No. MH-42/T-9125. Accordingly, the said truck came to be intercepted and on being confronted, the applicant disclosed that he was transporting coconut saplings belonging to accused Arman Chindha Patel, Anshik Suleman Patel and Ashik Shaikh, who were ahead of the said truck in a Toyota car bearing No. MH-18/AJ-2507. However, those accused fled away from the spot. After following necessary formalities and taking physical search of the applicant and as also the said truck, the raiding party found 24 gunny bags cannabis (ganja) weighing 636.74 kilograms, which was seized from the spot and FIR came to be lodged.

3. Mr. K. M. More, learned Counsel for the applicant, raised preliminary objection by submitting that Section 42 of the NDPS Act being a mandatory provision has not been followed in the present case and, therefore, on this ground alone the applicant deserves to be released on bail. The learned Counsel then next submitted that the applicant is only a truck driver and was doing his duty. Moreover, he

was not aware of the contraband found in the truck. The applicant is in jail since 02.09.2020, investigation is already completed and charge-sheet has been filed. The applicant being permanent resident will not flee from the justice and hence, he deserves to be released on bail.

4. Mr. V. M. Kagne, learned APP, on the other hand, submitted that the applicant was found carrying huge quantity of contraband. The other accused are still absconding and in such circumstances and having regard to the magnitude of the contraband, the accused should not be released on bail.

5. First of all, I would like to deal with the submission of the learned Counsel for the applicant that there is no compliance of Section 42 of the NDPS Act by the prosecution. Section 42 of the NDPS Act is a mandatory provision and casts a statutory duty on the officer of the concerned Police Station that, if the said officer has personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under NDPS Act has been committed, then he shall within seventy two (72) hours send a copy thereof to his immediate superior officer.

6. Neither FIR nor any other material is produced on record to show that the information so received from the informer was immediately recorded with necessary details. Even the Station Diary dated 25.08.2020 shows that Police Sub-Inspector Vishal Sonavane i.e. informant had informed the Head Constable, who took necessary entry in the Station Diary details, that he had received secret information from the informer in respect of the transportation of contraband through truck bearing registration No. MH-42/T-9125 from Bhusawal to Jalgaon but nothing is produced on record to show that any such information was recorded by said Police Sub-Inspector – Vishal Sonavane. Therefore, apparently there is no compliance of mandatory provision of the NDPS Act. Needless to say, the prosecution has not been able to show *prima facie* that there was due compliance of Section 42 of the NDPS Act. This being so, on this ground alone the present application deserves consideration.

7. I am also concerned with other facts, which are apparent from the FIR. The fact is that the other accused were also heading the said truck in a car and after realizing that the truck was intercepted by the police, they fled away. This clearly goes to show that they were

escorting the truck in which the contraband namely, cannabis (ganja) was kept.

8. As far as the present applicant is concerned, it is not the case of the prosecution that the raiding party also allegedly recovered contraband from the possession of the applicant. Merely because the applicant was driving the truck, it does not mean that he was aware of the contents in the truck. This aspect assumes significance in the light of the fact that the truck was being escorted by the main accused.

9. The objections so raised by the learned APP, as stated supra, at present do not find convincing as the same would require concrete oral and documentary evidence. Though the alleged quantity is huge, the possession of the alleged article ganja and its recovery are to be proved by way of oral and documentary evidence at the time of trial.

10. Admittedly, the applicant is in police custody since 02.09.2020. No bad antecedents of the applicant are shown by the prosecution or for that matter the applicant had indulged in the similar activity.

11. Therefore, considering the facts and circumstances of the case, this Court has come to the conclusion that the applicant is entitled to be enlarged on bail. Hence, following order.

ORDER

- i. The applicant be released on regular bail in connection with Crime No. 1024 of 2020, registered with MIDC Police Station, District Jalgaon, for the offences punishable under Sections 8, 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his furnishing P.R. Bond of Rs. 25,000/- [Rs. Twenty Five Thousand only], with one or two solvent sureties in the like amount.
- ii. The applicant shall not tamper with the prosecution evidence in any manner and shall not influence the witnesses.
- iii. The applicant shall not indulge in similar kind of activity.
- iv. Bail before the trial court.

12. Bail Application No. 522 of 2021 stands disposed of in aforesaid terms.

[V. G. BISHT]
JUDGE