

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

BAIL APPLICATION NO. 775 OF 2021

Raghu Kanhaiyalal Dayma,
Age : 22 years, Occu. Driver,
R/o. Dammakhedi, Tq. Sitamahu,
Dist. Mandsor, Madhya Pradesh

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. N. L. Choudhari, Advocate for the applicant
Mr. S. B. Narwade, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 11.08.2021

DATE OF PRONOUNCING THE ORDER : 21.08.2021

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. 45 of 2020, registered with Shirpur Taluka Police Station, District Dhule, for the offence punishable under Section 18 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”).

2. On 01.07.2020, Abhishek Patil, Assistant Police Inspector from Shirpur Police Station, called the informant and

informed that secret information from the informant is received to the effect that a Goods Carrier Truck bearing registration no. MP-44-HA-0547 is carrying opium from Rajasthan and proceeding towards Karnataka from Mumbai-Agra highway via Sangvi. Necessary permission to take action was taken from Superintendent of Police telephonically and also by sending letter to that effect.

3. The raid was accordingly carried out in the presence of panchas and gazetted officer by intercepting the said truck. The applicant was also made aware of his right of search in the presence of gazetted officer in writing to which he declined and allowed to take search of the truck. Nothing was found in the trolley and cabin of the truck. However, after climbing upon the cabin i.e. top floor of the truck above cabin, the raiding party found five sacks containing opium weighing 104.700 kilograms worth Rs. 10,47,000/-. Necessary samples were taken under the panchanama and the informant later on lodged the report.

4. Mr. Choudhari, learned Counsel for the applicant, at the very outset, assailed the prosecution case on the ground of non-compliance of Section 42(1) of the NDPS Act. According to learned

Counsel, although the informant claimed to have received secret information, the same was not reduced into writing and thus the mandatory provisions of Section 42(1) of the NDPS Act, are violated. Hence, on this ground alone, the present application deserves to be allowed.

5. The learned Counsel then next submitted that the applicant is not the owner of the truck and by no stretch of imagination it can be said that the applicant was consciously aware of the alleged opium found in the truck and this being so, on this ground also the present application deserves consideration.

6. Mr. S. B. Narwade, learned APP, on the other hand, vehemently opposed the submissions by contending that the applicant was found in conscious possession of opium weighing 104.700 kilograms. Thus, what was found in the possession of the applicant was commercial quantity of the opium.

7. The learned APP then invited my attention to the secret information which was reduced into writing on 01.07.2020 itself and filed on record and then he took me through the letter written to the

Superintendent of Police, Dhule having outward no. 998/2020 dated 01.07.2020 and thereby emphasized that the information was immediately communicated to the Superior Officer and permission for raid was sought. This fact is also reflected in Station Diary filed on record. Thus, according to learned APP, the involvement of the applicant in the offence is *prima facie* established. There being no merit in the application, same is liable to be rejected.

8. 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.

9. A bare reading of the FIR would show that no such information as claimed to have been received by the Assistant Police Inspector – Patil was immediately recorded with necessary details. Although the prosecution has produced on record the secret

information on 01.07.2020, the same does not *prima facie* gets corroboration from the contents of the FIR. The FIR also shows that the fact of secret information was communicated telephonically to the Superintendent of Police and his oral permission was taken on telephone itself and the same is again filed on record to substantiate that in fact the Superintendent of Police was communicated in writing on 01.07.2020 itself. The Station Diary also shows that the Superintendent of Police was communicated but the permission to carry on raid although telephonically obtained, is nowhere recorded and produced on record. Thus, there is *prima facie* doubt as to the compliance of Section 42 of the NDPS Act.

10. Be that as it may, the equally important aspect of the prosecution case is, whether indeed *prima facie* it has been established that the applicant was in conscious possession of the contraband in question. Undisputedly, the present applicant was the driver of the said truck and not the owner. It is also not in dispute that the contraband was not found in his cabin but on the top floor of the truck above cabin. The prosecution has also not produced on record the material to substantiate that the applicant was well aware of the contraband which was found in the truck. Merely because he was

driving the truck does not in itself would suggest he was in conscious possession of the contraband.

11. Even assuming for the sake of argument that there was contraband but the fact remains that the applicant is a driver, the investigation has already been completed leading to the filing of the charge-sheet. The trial is not likely to be over within a reasonable time. No criminal antecedents are brought on record so as to disentitle the applicant from granting bail. In my considered opinion, the applicant can be admitted to bail with certain conditions.

12. In view of the above, I pass the following order.

ORDER

- i. The applicant be released on regular bail in connection with Crime No. 45 of 2020, registered with Shirpur Taluka Police Station, District Dhule, for the offence punishable under Section 18 (b) 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. Bail before the trial court.

13. Bail Application No. 775 of 2021 stands disposed of in aforesaid terms.

[V. G. BISHT]
JUDGE