

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1108 OF 2021

Vishwanath @ Kolhiya s/o Pandit Pimple Applicant

Versus

The State of Maharashtra Respondent

Mr. K.A. Ingle, Advocate for the applicant.
Mrs. D.S. Jape, APP for respondent/State.

WITH
BAIL APPLICATION NO. 870 OF 2021

Sunil s/o Shivaji Pawar Applicant

Versus

The State of Maharashtra Respondent

Mr. Wankhade, Advocate for the applicant.
Mrs. D.S. Jape, Advocate for the respondent/State.

WITH
BAIL APPLICATION NO. 820 OF 2021

Ram Ashok Gavade Applicant

Versus

The State of Maharashtra Respondent

Mr. Satej Jadhav, Advocate for the applicant.
Mrs. D.S. Jape, APP for the State.

CORAM : M.G. SEWLIKAR, J.

DATE : 8th September, 2021.

PER COURT :

1. All these applications are disposed of by a common order since they arise out of the same crime.
2. Heard Shri Ingle, learned counsel for applicant in Bail Application No. 1108/2021, Shri Wankhade, learned counsel for applicant in Bail Application No. 870/2021, Shri Satej Jadhav, learned counsel for applicant in Bail Application No. 820/2021 and Mrs. Jape, learned APP for the State.
3. Facts leading to these applications are that informant who is a Police Inspector received a tip off that all the applicants were transporting contraband articles i.e. *ganja* for sale. Accordingly, informant constituted a team which raided the spot of the incident i.e. old railway gate, Chikalthana. Accordingly, one Innova Car bearing No. MH 20 BY 1954 was spotted by the team. It was signaled to stop. On taking search of the said car, 51 sealed packets were found emitting strong odour. Usual procedure of taking samples was followed. All the three applicants were occupants of the car. After completing the usual procedure of taking samples, First Information

Report came to be lodged. After completion of investigation, charge-sheet came to be filed.

4. Shri Jadhav, learned counsel for the applicant submitted that the applicants were not in conscious possession of the contraband articles. He further submitted that charge-sheet has been filed without filing CA report. Charge-sheet is, therefore, incomplete. On the basis of such incomplete charge-sheet, Court cannot *prima facie* form an opinion that the articles which were found in the car were contraband articles. For this purpose he placed reliance on the judgment in the case of Sunil Vasantrao Phulbande and another Vs. State of Maharashtra reported in **2002(3) Mh.L.J. 689**. In this judgment, the learned Single Judge of this Court has observed thus :-

“12. In the instant case, it is not in dispute that report of chemical Analyser is the foundation on the basis of which Magistrate can proceed to take cognizance of the offences. The contraband, which is seized in the present case, is Ganja and unless and until sample, which was drawn by the prosecution, conforms with the article, which is seized during investigation, i.e. Ganja, the Magistrate is not in a position to proceed to take cognizance of the offence. The charge-sheet/report as contemplated under Section 173(5) of the Code, forwarded to the Magistrate should be such that on the basis of which Magistrate should be able to proceed further and

take cognizance. The documents, which are required to be accompanied with the charge-sheet/report as contemplated under sub-section (5) of section 173 of the Code, therefore, assume importance, without which charge-sheet/report submitted by the Police under section 173 of the Code would be incomplete and Magistrate also may not be in a position to proceed to take cognizance on the basis of the said report. The concept of filing of charge-sheet by the Police in the Court must fulfil requirement of section 173(2) and (5) of the Code and it is only after such compliance, report which is filed by the Police in the Court can be construed as complete report under section 173(2) and (5) of the Code.

Having regard to these observations, it is clear that charge-sheet filed without CA report is incomplete. Accused are, therefore, entitled to be released on bail.

5. Learned APP submitted that this point was not raised before the Sessions Court. This submission is stated to be rejected. Simply because this point was not raised before the Trial Court does not debar the applicants from raising this point again. In this view of the matter, following order is passed :-

ORDER

- i) All the applications are allowed.
- ii) Vishwanath @ Kolhiya s/o Pandit Pimple, applicant in Bail Application No. 1108/2021, Sunil

s/o Shivaji Pawar, applicant in Bail Application No. 870/2021 and Ram Ashok Gavade, applicant in Bail Application No. 820/2021 be released on PR bond of Rs. 1,00,000/- (Rs. One Lac only) each with one solvent surety each in the like amount in connection with Crime No. 0011/2021 registered with MIDC CIDCO Police Station, District Aurangabad, for the offences punishable under Sections 8(c), 20(b)(ii)(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, on condition that they shall report to the concerned police station every 15 days and shall provide their phone numbers to the Court and the concerned police station.

iii) Applications stand disposed of.

(M. G. SEWLIKAR)
Judge