

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

54 BAIL APPLICATION NO.1178 OF 2021

Yuvraj S/o. Tatyrao Kale
Age: 30 years, Occu.: Labour,
R/o. Datta Nagar, Murud,
Tq. and Dist.Latur. ..Applicant

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Murud Police Station, Latur,
Tq. and Dist.Latur. ..Respondent

Advocate for Applicant : Shri Gajanan K. Sontakke
APP for Respondent : Shri S.D.Ghayal

CORAM : M.G.SEWLIKAR, J.

DATE: 25th October, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0225 of 2020 registered with Murud Police Station, Dist.Latur, under Section 20(b) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. Brief facts are that informant, Assistant Police Inspector received a tip-off on 19th December, 2020 that accused No.1 - Govind Khose has stored Ganja in his shop by the name of Om

Sairaj Automobiles, Swaraj Colony, Murud and was selling it. The complainant complied with all the mandatory provisions for effecting raid. The complainant and the staff raided shop of the accused No.1 by the name of Om Sairaj Automobiles, Murud at 03:10 hours. The shutter was half open and lights were on. On calling inmates, shutter was opened. Informant found three persons there. Their names were (1) Govind Digambar Khose (2) Yuvraj Tatyarao Kale (applicant) and (3) Sunil Rohidas Shinde. On taking search operation, three bags of nylon were found in the north corner of the shop. On enquiry, accused No.1 - Govind replied that Yuvraj Kale (applicant) and accused No.3 - Sunil Shinde brought Ganja from other city in Mahindra Mini Van bearing No.MH25 AL-9014 and Ganja was being sold at Latur in his Scorpio bearing No.MH-04 BN-5715 and said Ganja was brought for sale. On checking a nylon bag, Ganja weighing 20 kgs. worth Rs.1,20,000/- was found. Another bag was opened in which Ganja weighing 15 kgs. worth Rs.90,000/- was found. In third bag, Ganja weighing 16 kgs. worth Rs.96,000/- was found. Total quantity of Ganja was 51 kgs. Samples were taken into two separate packets. After disclosure of the offence, charge-sheet came to be filed under Section 20(b) of the NDPS Act.

3. Admittedly, Chemical Analyzer report was not filed at the

time of submission of the charge-sheet before the concerned Court. In the case of **Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra [2002 (3) Mh.L.J. 689]** following observations are made :

“The Charge-sheet/ report as contemplated under Section 173(5) of the Criminal Procedure 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 fulfill 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. In a given case, certain documents, which are formal in nature, if not accompanied with the report/ charge-sheet may not change the nature of report/charge-sheet contemplated under Section 173(2) and (5) of the Code particularly when material is sufficient for the Magistrate to take cognizance of the offence as per provisions of the Code. In prosecution for the offences punishable under Sections 20, 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, sheet itself is incomplete and such charge-sheet cannot be said to be a

charge-sheet as contemplated under Section 173(5) of the Criminal Procedure Code so as to enable the Magistrate (herein the Special Judge under 'NDPS Act') to take cognizance of the offence and, therefore, on this ground also applicant Jay Yogeshwar @ Yogesh Dagu @ Dattu Gaikwad deserves to be released on bail."

4. Since charge-sheet is incomplete, cognizance on the basis of such charge-sheet could not have been taken. On this ground alone, other two accused have been released on bail by this Court. In view of this, I am inclined to release the applicant on bail. Hence, the order :

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.75,000/- (Rs. Seventy-five thousand only) with one solvent surety in the like amount, in connection with Crime No.0225 of 2020, registered with Murud Police Station, Dist.Latur, under Section 20 (b) of the NDPS Act.
- iii) Bail Application is disposed of.
- iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

**(M.G.SEWLIKAR)
JUDGE**