

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

951 BAIL APPLICATION NO.1220 OF 2021

**RAMCHANDRA @ CHANDRYA S/O. RAOSAHEB PIMPALE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. M. L. Wankhade, Advocate for the applicant
Shri. V. M. Kagne, APP for the respondent/State

**WITH
BAIL APPLICATION NO. 1168 OF 2021**

**SIDDHESHWAR S/O. NARAYAN GHAYAL
VERSUS
THE STATE OF MAHARASHTRA**

Shri. D. U. Kamble, Advocate for the applicant
Shri. V. M. Kagne, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 18th NOVEMBER, 2021**

PER COURT :-

1. Heard.
2. Both these applications can be disposed by common order as they arise out of the same crime.
2. It is alleged in the FIR that both the applicants were occupants of Inova car No. MH20 BY 1954. Police had

received the information that *Ganja* was being carried in the Inova car. On intercepting the said car and taking search of it, 51 sealed packets were found emitting strong odour. FIR came to be lodged after completion of usual procedure. Charge-sheet has been filed.

2. Shri. Wankhade learned counsel for the applicants submits that charge-sheet is filed without CA report. He places reliance on the case of ***Sunil Vasantrao Phulbande and another Vs. State of Maharashtra*** reported in ***2002(3) Mh.L.J. 689***. He submits that without CA report charge-sheet is incomplete.

3. In the case of ***Sunil Vasantrao Phulbande and another Vs. State of Maharashtra*** (Supra) following observations are made by the learned Single Judge of this Court (Coram : M.G. Sewlikar, J.)

“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 seize 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 evident that charge-sheet filed without CA report is an incomplete charge-sheet. No cognizance of offence can be taken on the basis of such a charge-sheet. Hence, applicants are entitled to be released on bail. Following order is, therefore, passed.

ORDER

1. Both the applications are allowed.

2. Ramchandra @ Chandrya s/o Raosaheb Pimpale in Bail Application No. 1220 of 2021 and Siddheshwar s/o. Narayan Ghayal in Bail Application No. 1168 of 2021 be released on PR bond of Rs. 1,00,000/- (Rupees One Lac only) each with one solvent surety each in the like amount in connection with CR No. 11 of 2021 registered with MIDC CIDCO Police Station, Aurangabad for the offences punishable under Sections 8(c), 20(b)(ii)(c), 29 of NDPS 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.

3. 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.

4. Applications stand disposed of.

[M. G. SEWLIKAR, J.]

ssp