

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

BAIL APPLICATION NO. 1657 OF 2021

Suryabhan Ramchandra Shirsath

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. K.N. Shermale, Advocate for applicant

Mr. S.N. Morampalle, A.P.P. for respondent - State

....

CORAM : R.G. AVACHAT, J.

DATED : 22nd DECEMBER, 2021

PER COURT :

1. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 427 of 2021 registered with State Excise Inspector, State Excise Flying Squad Department, Pune for the offences punishable under Sections 65(a), (e), 81, 83, 90, 103 and 108 of Bombay Prohibition Act and under Sections 420, 465, 468 and 471 of the India Penal Code.

2. Heard. Perused the First Information Report ('F.I.R.') and related papers. The F.I.R. has been lodged by the official of the State Excise Department, who was a member of the flying squad. It has been averred in the F.I.R. that the tip-off was received that one tempo carrying illicit foreign liquor was to arrive within the limits of village Velhale Shivar on Pune Nashik

Highway in the Ahmednagar District. The members of the flying squad, therefore, kept secret vigil at the said place on 11th November, 2021. The members of the flying squad noticed the tempo of the particular description and number as well. The tempo was, therefore, intercepted. On enquiry, the driver of the tempo (applicant herein) informed the tempo to have contained cotton. The members of the flying squad had however made the applicant to open the lock of the body (rear portion) of the tempo to find it to have contained liquor viz. 96 boxes of Kingfisher Strong and 799 boxes of foreign liquor, totally worth Rs.52,96,800/-. It was found that the said liquor was manufactured in Goa and it had permission to be sold in Goa itself. The applicant was found in possession of the papers viz. forged bills and invoices. It was further realised that co-accused Mahesh Tanna and Pankaj Sharma had loaded the liquor boxes in the tempo for onward transmission. The tempo belongs to one Harish Vaje. F.I.R., therefore, came to be lodged against these three and one unknown person as well. The applicant came to be arrested same day.

3. Learned counsel for the applicant would submit that the applicant was a driver of the intercepted vehicle. He did not have knowledge what kind of goods he was transporting. The applicant, therefore, could not be attributed with conscious possession of the seized boxes containing liquor bottles. He would further submit that the applicant is resident of Mumbai and has a family to look after. Learned counsel, therefore, urged for grant of bail.

4. Learned A.P.P. would, on the other hand, submit that huge quantity of foreign liquor has been seized from the possession of the applicant. Investigation is in progress. It might be a case of big syndicate. He, therefore, urged for rejection of the application.

5. The applicant is a driver of the vehicle transporting the foreign liquor. Three other persons have already been arrested. The applicant cannot be attributed with ownership of the seized liquor. He is behind the bars for little over one and half month. It will take time for completion of investigation, filing of charge-sheet and resultant trial as well. True, the applicant tried to mislead the members of the flying squad. The fact is that he is no more than an employee/driver of the vehicle with the knowledge what the vehicle contained. This Court is, therefore, inclined to grant bail. Hence, the following order :-

- (i) The application is allowed.
- (ii) The applicant be released on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount in connection with Crime No. 427 of 2021 registered with State Excise Inspector, State Excise Flying Squad Department, Pune for the offences punishable under Sections 65(a), (e), 81, 83, 90, 103 and

108 of Bombay Prohibition Act and under Sections 420, 465, 468 and 471 of the India Penal Code.

- (iii) The applicant shall not tamper with the prosecution evidence in any manner.

(R.G. AVACHAT, J.)

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