

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2710 OF 2021

PAVAN BALKRUSHNA KSHIRSAGAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr. Shekhar Jagtap a/w. Ms. Sairuchita Choudhary, Mr. Akash Pandey, Ms. Riya Frances i/b. J. Shekhar & Co., Advocate for the Applicant.

Ms.P.N.Dabholkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

DATE : 16th NOVEMBER 2021

P.C. :

1 The present application has been moved by the
applicant under Section 438 of the Code of Criminal Procedure
apprehending arrest under Section 20(b) and 22 of Narcotic
Drugs and Psychotropic Substances Act (NDPS Act) registered
vide Crime No.784 of 2021 with Police Station Malegaon Taluka.

2 As per accusations made in the First Information Report (FIR) on 14th October 2021, accused Shankar Bhaskar Ghodeswar was found transporting 28.765 kgs of ganja in Accent Hyundai bearing Registration No.MH-01-CR-915. Accordingly, the raiding party seized the ganja in question. The said accused revealed that it was the applicant who had asked him to carry the ganja and deliver the same at Malegaon. Accordingly, FIR came to be registered.

3 Mr.Shekhar Jagtap, learned counsel for the applicant, submits that the applicant has nothing to do with accused Shankar Bhaskar Ghodeswar and he has been implicated falsely purely for political reasons. Moreover, the name of present applicant is given by the accused and that is only ground for arraying him as an accused. The learned counsel also invited my attention to the Remand Report of accused Shankar Bhaskar Ghodeswar and submitted that earlier the accused was remanded to police custody on 14th October 2021 till 18th October 2021. However, on 16th October 2021, the Investigating Officer sought

his magisterial custody as according to the Investigating Officer, the said accused was not giving any more information. Also, the accused was in state of addiction, trembling and was incoherent in his conversation. Moreover, the alleged ganja has been seized. There are no criminal antecedents. In such circumstances, the applicant deserves protection at the hands of this Court, urged learned counsel.

4 Ms.PN.Dabholkar, learned APP, on the other hand, vehemently submits that there is CDR record which shows that the applicant was constantly in touch with accused Shankar Bhaskar Ghodeswar. The learned APP also invited my attention to the statement of Ranjit Kaur Dilip Singh Sandhu and pointed out that although the mobile number used by the applicant was in the name of said witness, but in reality, the applicant was using the mobile since last 10 to 12 years. According to learned APP, it is only on the direction of applicant, the accused Shankar Bhaskar Ghodeswar illegally carried ganja in a car which was to be delivered at Malegaon. Having regard to the seriousness of

offence, detail investigation is necessary, for which the custody of applicant is must. In such circumstances, the application being devoid of merit, the same is liable to be rejected.

5 Perused the FIR and other papers including the statement of said Ranjit Kaur Dilip Singh Sandhu relied by the learned APP. Two main submissions emerge from the argument of learned APP. Firstly, the accused Shankar Bhaskar Ghodeswar gave the name of the applicant at whose instance he was carrying the ganja in his car. Secondly, there are CDR records and the statement of said Ranjit Kaur Dilip Singh Sandhu which goes to show that the applicant was constantly in touch with the accused Shankar Bhaskar Ghodeswar.

6 As far as present applicant is concerned, admittedly his name was revealed by accused Shankar Bhaskar Ghodeswar. How far that statement can be taken into consideration is a moot point which will have to be considered at the time of trial. Apparently, at this stage, the said sole factor cannot be a ground

for inferring that it was the applicant who directed accused to carry ganja in a car.

7 There is one more reason to question the conduct of accused Shankar Bhaskar Ghodeswar. It appears from the Remand Report that he was produced before the learned Magistrate on 14th October 2021 and was remanded to police custody till 18th October 2021. However, on 16th October 2021 the Investigating Officer again moved the learned Magistrate and sought the police custody so given till 18th October 2021 to be converted into magisterial custody on the ground that the accused Shankar Bhaskar Ghodeswar is totally in a state of addiction, his body is trembling and is not helping him in any manner with incoherent speech. If this was the condition of the accused Shankar Bhaskar Ghodeswar on 16th October 2021 then by all logical reasoning he must have been in the same condition when for the first time i.e. on 14th October 2021 he was produced before the learned Magistrate for remand purposes. This being so, how far the name of applicant given by the accused Shankar

Bhaskar Ghodeswar is to be relied on is certainly a nagging question which does not admit an easy answer prima facie.

8 Admittedly, statement of Ranjit Kaur Dilip Singh Sandhu shows that Mobile No.9422293077 though standing in her name, is being used since last 10 to 12 years by the applicant and as also there is CDR record but CDR record at this stage does not reveal the nature of conversation. Its evidentiary value will again have to be established with all necessary requisites at the time of trial. At this stage, this evidence, do not in any manner, prima facie further the case of prosecution.

8 Moreover, all the contraband has been duly seized by the Investigating Officer. As far as the remaining investigation is concerned, the same can be carried out with the help of applicant to whom this Court would be directing to attend the concerned police station and co-operate with the investigation.

9 For the aforesaid reasons, I am inclined to allow the present application. Hence, the following order :

ORDER

- 1 The application is allowed.

- 2 In the event of his arrest in Crime No. 784 of 2021 for the offences punishable under Section 20(b) and 22 of NDPS Act registered with with Police Station Malegaon Taluka, the applicant be released on bail on his executing P.R.Bond in sum of Rs.25,000/- with 1/2 surety in like amount.

- 3 The applicant shall attend Police Station Malegaon Taluka as and when called by the Investigating Officer.

- 4 The applicant shall not tamper the prosecution evidence.

- 5 The application stands disposed off accordingly.

(V. G. BISHT, J.)