

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 384 OF 2021

Tushar Anil Jaiswal
..vs..
State of Maharashtra, thr. P.S.O.

AND

CRIMINAL APPLICATION (ABA) NO. 390 OF 2021

Dipak Kishan Raguvir
..vs..
State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Criminal Application (ABA) No.384 of 2021

Shri Anand Jaiswal, Sr. Advocate with Shri Rohan Chandurkar,
Advocate for applicant.

Shri M.J. Khan, A.P.P. for non-applicant/State.

Criminal Application (ABA) No.390 of 2021

Shri A.A. Dhawas, Advocate for applicant.

Shri M.J. Khan, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 14/07/2021

Hearing was conducted through Video
Conferencing.

2. In anticipation of arrest in Crime No.203 of 2021 registered with Shirpur Police Station, District Yavatmal for the offence punishable under Sections 65(a), 65(e) of the Maharashtra Prohibition Act, 1949 and Sections 130(1) and 177 of the Motor Vehicle Act, 1988, the applicants have applied for pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure. Learned Counsel for applicants primely

argued that since country liquor was intercepted and seized within the limits of Yavatmal District, the allegations in the First Information Report even if accepted at their face value, it would not make out an offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. It is submitted that applicant Tushar Jaiswal was retail country liquor vendor whilst applicant Dipak Raguvir was noway concerned with the alleged seizure. It is the submission that since the country liquor was legally purchased by the licensee, it cannot be termed as smuggling nor illegal transportation. It is argued that as the vehicle was intercepted at a place beyond transport permit, at the most, it is violation of Rules and therefore, the Police have no authority to take cognizance. In support of this submission, reliance is placed on the decision of this Court in Criminal Writ Petition No.232 of 2017 decided on 26.04.2017 (*M/s. R.M. Jaiswal Wine Shop vs. State of Maharashtra*). Lastly, it is submitted that there is no necessity of custodial interrogation since the applicant Tushar Jaiswal has abided by all condition imposed on him while granting interim protection and he is ready to co-operate with the investigation agency.

3. The State resisted both applications by filing affidavit-in-reply. The prosecution case in brief has been narrated in the reply. It is contended that when the vehicle was intercepted, two persons namely

Nandeshwar Kale and Harish Tirankar came to be arrested. During interrogation, they had disclosed that initially the liquor was transported to the shop of applicant-Tusharb Jaiswal at Wani, who instead of unloading the goods, had directed to take vehicle along with stock of liquor to Ghuggus in Chandrapur district, where sell of liquor is totally prohibited. According to the State, the transport permit was from Yavatmal to Wani via Umari however, the vehicle was found at Chargaon Square which is beyond Wani. It is contended that the vehicle was proceeding towards Ghuggus to deliver country liquor i.e. to transport the goods in prohibited area.

4. On the date of incident, the Police received information that one white colored Bolero-vehicle was illegally carrying country liquor. After Receiving the lead, the Police intercepted concerned vehicle at Chargaon square. On search, it was found that vehicle was carrying country liquor bottles worth Rs.10,57,600/-. The vehicle was driven by co-accused Harish Tirankar whilst it was owned by another co-accused Nandeshwar Kale. Both were arrested on the spot and during interrogation, they have informed that instead of unloading goods at the country liquor shop of applicant Tushar Jaiswal at Wani, as per directions of both applicants the vehicle was proceeding towards Ghuggus in Chandrapur district to deliver the same to one Nidhansingh Dhagadi.

5. Admittedly, applicant Tushar Jaiwal was having license to run liquor business at Wani. He had purchased country liquor from wholesaler of Yavatmal. Transport pass in form no.C.L. XVII was issued to transport the country liquor from Yavatmal to Wani by vehicle bearing registration No.MH-29 BE 0179. The police paper discloses that instead of unloading goods at Wani as per transport pass, it was found to be traveled beyond Wani to Chargaon Square at Yavatmal district. It is the allegation that the vehicle has traveled in contravention with the transport pass. According to the State, as per directions of applicant Tushar Jaiswal, country liquor was being transported in the prohibited area i.e. within the Chandrapur district. It is not in dispute that the vehicle carrying country liquor had not entered within the Chandrapur district, but was found in Yavatmal district only. Since applicant Tushar Jaiswal was having country liquor license and had obtained transport pass, it cannot be said that the possession was illegal.

6. Learned Counsel for the applicants would submit that the provisions of Section 65(e) of the Maharashtra Prohibition Act, 1949 would not apply since neither the applicant sold or buys nor possesses the goods within the prohibited area. It is strenuously argued that since it was a case of breach of license condition, the Excise authority would only be

competent to take cognizance. In support of said contention, reliance has been placed on the decision of this Court in Criminal Writ Petition No.100 of 2013 decided on 24.07.2013 (*Chandrapur Zilla Liquor Association vs. State of Maharashtra*). True, vide Government Resolution dated 18.07.2013, in case of breach of license condition, the competent authority to take cognizance is an Excise Department, however the Police can take cognizance in case of smuggling of liquor. Whether the act of transporting country liquor in violation of permit conditions amount to smuggling is a question for consideration.

7. The prosecution is mainly relying on the statement of co-accused which is inadmissible. The entire case is based on intended transportation in prohibited area which requires to be proved by way of leading evidence.

8. The State has contended that custodial interrogation is required to find out as to whom the applicants were intending to deliver the stock of country liquor at Ghuggus. However, reply-affidavit itself contents the name of person where the goods were allegedly intended to be delivered. Moreover, it is argued that in order to verify the stock register of the applicants' shop, his custody is required. Already interim protection has been granted to both applicants. Applicant Tushar Jaiswal was having

license to run country liquor shop. As per Rules, he is bound to maintain daily stock register which is available for inspection to Excise authority. Though one old antecedent of the year 2017 has been shown, however, that alone would not suffice to curtail the personal liberty of the applicants, if they are otherwise entitled. The Police can carryout the investigation, even if applicants are directed to facilitate the same by imposing certain conditions. The alleged offences are not punishable with death or life imprisonment.

9. In view of the above, following order is passed :

(a) Ad-interim orders in Criminal Application (ABA) No.384 of 2021 dated 30.06.2021 and in Criminal Application (ABA) No.390 of 2021 dated 09.07.2021 are hereby made absolute with a modification to the extent of attending the investigating agency.

(b) Both the applicants/accused shall attend concerned Police Station on every Sunday and Wednesday in between 11.00 am to 02.00 pm till filing of charge-sheet.

(c) The Applicant Tushar Jaiswal shall make available all requisite registers maintained under the Rules for inspection of the Police as

and when required.

- (d) The Applicants/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

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