

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

25 BAIL APPLICATION NO.46 OF 2022

Premnath s/o Chandrakant Shinde ...Applicant

Versus

1. The State of Maharashtra

2. Inspector of Police ...Respondents

...
Advocate for Applicant : Shri Swapnil Joshi h/f.
J.P.Legal Associates
Advocate for Respondents – State : Shri S. B. Narwade
...

CORAM : M. G. SEWLIKAR, J.

DATED : 21-02-2022

PER COURT :-

1. By this application the applicant is seeking his enlargement of bail in Crime No.0346/2021 registered with M.I.D.C. Police Station Latur, District Latur, under Sections 8(c), 20(b)(ii)(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Case of the prosecution in short is that on tip off the police raided the spot in front of the Zee Little Mount English School on Khadgaon to PVR Talkies road, Latur. There they found a Swift Desire Car of white colour, the number of which matched with

the number received in the information. They found three persons sitting in the car. One person was sitting on the driver seat, the other one on the passenger seat and third one was sitting on the back seat. On checking the vehicle, Ganja weighing 94 kg. was found in the boot of the car. Samples were drawn. Samples were sent for chemical analyser for analysis. C.A. Report is received which indicates that the material found in the boot of the car was Ganja.

3. Charge-sheet is filed. Learned counsel Shri Swapnil Joshi holding for Shri J. P. Legal Associates submits that the applicant has no concern with the alleged offence. He is the friend of Vaibhav Ranba Ujgare the driver of the car. Applicant was a badli driver. He submits that there is nothing on record to indicate that the applicant was in conscious possession of the Ganja.

4. Learned APP submits that all the three accused were sitting in the car. The material found in the boot of the car was Ganja in terms of the C.A. Report. He further submits that the quantity of Ganja was 94 kg. Having regard to the commercial quantity of the Ganja found with the applicant and two other accused, application deserves rejection.

5. On perusal of the charge-sheet it is seen that the statement of the owner of the vehicle by the name of Balwant Dashrath Salunke has been recorded. His statement shows that accused Vaibhav Ranba Ujgare had taken the vehicle of Balwant Dashrath Salunke to go to Hyderabad. Investigation further revealed that the applicant was the driver of the car. The investigation further revealed that Manoj Shesherao Jogeshwari was the person who had procured Ganja from Hyderabad. The investigation further shows that accused Vaibhav Ranba Ujgare and Manoj Shesherao Jogeshwari were in constant touch with each other. The Investigating machinery could not collect any evidence to show that the applicant was in any manner in touch with accused Vaibhav Ranba Ujgare or Manoj Shesherao Jogeshwari. Therefore, simply because the applicant was found sitting in the car, it cannot be inferred that he had knowledge that Ganja was stored in the car. In order to determine whether possession was conscious possession or not, it is necessary to ascertain whether the applicant / accused had any control over the Ganja. There is nothing on record to show that till the raid was effected, applicant was at all having any knowledge about the Ganja being stored in the boot of the car.

6. Considering the evidence collected by the prosecution there is no prima-facie case to indicate that the applicant was in

conscious possession of the Ganja. Having regard to this, stringent conditions contemplated by Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. i.e.

- (1) Whether there is sufficient evidence for recording conviction against the accused.
- (2) Whether applicant is likely to commit similar offence again are not fulfilled.

7. There is nothing on record to show that the applicant is likely to commit similar offence again. He does not have criminal antecedents. In view of this matter, I am inclined to release the applicant on bail. Hence, the order :

ORDER

1. Bail Application No. 46 of 2022 is allowed.
2. The applicant be released on bail on P.R. bond of Rs. 35,000/- (Rupees Thirty Five Thousand only) with one solvent surety in the like amount in connection with Crime No.0346/2021 registered with M.I.D.C. Police Station Latur, District Latur, under Sections 8(c), 20(b)(ii)(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on condition that he shall not tamper the prosecution evidence and shall attend the Court on the dates fixed during the trial.

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.

[M.G. SEWLIKAR, J.]

shp/-