

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

BAIL APPLICATION NO. 212 OF 2022

KISHOR BARAKU PATIL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Syed Azizoddin
APP for Respondents/State : Mr. S.B. Narwade

...

**AND
BAIL APPLICATION NO.222 OF 2022**

SANCHAY S/O SANTOSH JAIN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. K.N. Shermale
APP for Respondents/State : Mr. S.B. Narwade

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**CORAM : M.G. SEWLIKAR, J.
RESERVED ON : 4th March, 2022
PRONOUNCED ON : 31st March, 2022**

ORDER:-

Both these applications are being disposed of by common order as they arise out of the same crime.

2. Facts in nutshell are that informant who is a Inspector in Excise Department Divisional Flying Squad got a tip off that foreign liquor and beer were transported in the truck of Eicher Company bearing No. MH-04-HD-

8892. Accordingly, informant formed a raiding party and went to H.P. Petrol Pump on Nashik-Pune Highway and started checking vehicles at 5.00 am. The informant signaled the said truck to stop. When the informant asked the driver about the contents of the truck, the driver misled him saying that it contained cotton. When informant showed his identity card to the driver, he opened rear portion of the truck. On checking it was found that there were corrugated boxes which contained foreign liquor and beer boxes. On opening the box, it was found containing Royal Blue Malt Whiskey of 180 ml and another box was found containing tins of beer of 500 ml. On grilling the driver by the name of Suryanarayan Ramchandra Shirsath he disclosed that the said foreign liquor and beer belonged to Harish Vaze. He further disclosed that Harish Vaze had been giving instructions on phone as to the destination of the said truck. 38,352 sealed bottles of Royal Blue Malt Whiskey of 180 ml of Distilled Blended & Bottled Pigott Chapman & Co., Colvale Industrial Estate, Bardez, Goa worth Rs.49,85,760/- and 2304 tins of Kingfisher Strong Beer of 500 ml of United Breweries Ltd., Goa worth Rs. 3,11,040/- were found in the said truck. Accordingly, panchnama was drawn and all these liquor and beer bottles were seized. On enquiry, the driver disclosed that he was not having permit of transporting these whiskey and beer boxes. Accordingly, the said driver came to be arrested. On these allegations FIR came to be lodged under Section 65 (a) (e), 81, 83, 90, 103, 108 of the Bombay Prohibition Act

and under Section 420, 465, 468 and 471 of the I.P.C. came to be registered with State Excise Flying Squad Department, Pune vide Crime No. 427/2021.

3. Bail Application No.212/2022 is filed by Kishor Patil and Bail Application No. 222/2022 is filed by the applicant Sanchay Jain.

4. Heard learned counsel Shri Syed for the applicant in bail application no. 212/2022, Shri Shermale learned counsel for the applicant in bail application no. 222/2022 and Shri Narwarde learned APP for the State in both the applications.

5. Learned counsels Shri Syed and Shri Shermale submitted that there is no evidence to show that the applicants were involved in the commission of the alleged offence. They submitted that both the applicants are innocent persons. They have been falsely implicated in the instant case. They submitted that both the applicants were not present at the scene of the offence. They have no concern with the alleged offence. Shri Syed submitted that applicant-Kishor came to be arrested soon after he was released on bail in another crime registered in Pen Police Station. Both learned counsels submitted that none of them were present at the time when the truck was intercepted. The allegations against the applicant Kishor are that he was piloting the vehicle right from Goa via Sawantwadi on a motorcycle. The

allegations against applicant-Sanchay is that he purchased the Whiskey and Beer Bottles found in Eicher truck. However, there is no evidence in this regard. They, therefore, prayed for releasing the applicants on bail.

6. Learned APP Shri Narwade submitted that both the applicants are hardened criminals. He submitted that criminal cases are pending against both the applicants. If they are released on bail they will resort to similar crime again. He submitted that applicant Kishor was arrested by Pen Police Station in which similar allegations were there. He submitted that he was released on bail by the Court, soon thereafter applicant Kishor committed another offence. In such circumstances, it will not be in the interest of the society to release the applicants on bail. Learned APP Shri Narwade submitted that applicant Kishor Patil is the resident of Dhule and applicant Sanchay Jain is the resident of Bhopal. If they are released on bail, their presence cannot be secured. He, therefore, prayed for rejection of the applications. He further submitted that to deceive the Police it was wrapped with some other material to conceal that it was foreign liquor.

7. I have given thoughtful consideration to the submissions made by all the learned counsels. From the tenor of the FIR it is clear that none of the applicants was present at the time of stoppage of the truck and seizure of the whiskey bottles and beer bottles. It is alleged by the prosecution that

applicant-Kishor was piloting the vehicle and against applicant-Sanchay the allegations are that he purchased these bottles. For this purpose, prosecution has not led any evidence. The only evidence the prosecution could collect is the statement of driver Suryanarayan who himself is an accused in this offence. His statement shows that applicant Kishor piloted the truck from Goa via Sawantwadi. This statement is inadmissible in evidence. The prosecution could not collect any other evidence to indicate the involvement of the applicants in the alleged offence. It is simply alleged that applicant Sanchay purchased these bottles with the help of above accused by the name of Mahesh Bhuralal Tanna @ Mahesh Thakkar, Pankaj Sharma and Samuel Montero. There is no evidence to show that applicant Sanchay purchased these bottles.

8. It is true that cases are pending against both the applicants. However, pendency of the cases against both the applicants will be of relevance only when it is shown that there is *prima facie* case in the offence in which he is seeking bail. In the case at hand, except the statements of the driver and other accused persons there is no evidence to show that applicants were involved in the commission of the alleged offence. In addition to this, there is no evidence to show that charge-sheet has been filed in the crimes which are shown to be pending against the applicants. Having regard to this,

I am inclined to release the applicants on bail. Hence, the following order is passed:

ORDER

- I) Both the Applications are allowed.
- II) Each of the Applicants be released on PR bond of Rs.35,000/- with one solvent surety in the like amount each, in connection Crime No.427/2021 under Section 65 (a) (e), 81, 83, 90, 103, 108 of the Bombay Prohibition Act and under Section 420, 465, 468 and 471 of the I.P.C. with State Excise Flying Squad Department, Pune on condition that:
 - a) they shall not temper the prosecution evidence and shall not leave the jurisdiction of the concerned Court without the permission of the concerned Court.
 - b) they shall deposit their passport, if any, with the concerned Police Station.
 - c) they shall give their mobile number to the concerned Court and the concerned Police Station and if they change their mobile numbers, the changed numbers should also be furnished to the concerned Court and Police Station.
 - d) in case of commission of any other crime by the applicants, during the pendency of this crime, their bail shall stand cancelled.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.