

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 261 OF 2022

SHAIKH SHARIF SHAIKH RAFIQ
VERSUS
THE STATE OF MAHARASHTRA

Mr.Satej S. Jadhav, Advocate for the applicant.

Mr.V.S. Badakh, APP for the respondent/State.

CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 19.04.2022
PRONOUNCED ON : 29.04.2022

ORDER :-

01. Present applicant has been arrested on 03.04.2021 by Bhusawal Bazar Peth Police Station, Dist. Jalgaon, in connection with Crime No.140 of 2021 for the offences punishable under sections 20,22,29 of the Narcotic Drugs and Psychotropic Substances Act. He has filed present application under section 439 of the Cr.PC.

02. Heard Mr. Satej S. Jadhav, learned Advocate for the applicant and Mr.V.S. Badakh, learned APP for the respondent/State.

03. The learned Advocate for the applicant has submitted that the

applicant was not driver nor owner of the vehicle in which the alleged contraband Ganja was recovered. He was found sitting on the said vehicle that too on the backside over the watermelons. The applicant is a labour and he was only to load and unload the watermelons. He had no knowledge at all that the sacks were filled with contraband article like Ganja. It cannot be said that he was having conscious possession of the contraband article. Now, the investigation is complete and charge-sheet is also filed. All the members of the raiding party are saying about the presence of the applicant in the truck, however, there was no enquiry or investigation as to whether the present applicant had any knowledge about the article. The applicant was under the orders of his master and could have done only loading and unloading, in order to earn bread and butter. He is the only bread earner of the family. He is ready to abide by the terms of the bail.

04. Learned APP has strongly opposed the application and submitted that the contraband article which was seized was bundled in 14 packets. The weight of the Ganja was 70 kg. 519 grams in vehicle No. GJ-05-BU-0177 and a bundle of 14 packets containing Ganja was weighing 71 kg. 133 grams from vehicle No. GJ-05-BT-5155. Definitely, it was a commercial quantity, if we

taken together. It would be for the present applicant to prove that he had no knowledge about the contents of the material. He was very much sitting in the vehicle at the relevant time when the vehicles were apprehended. When there is clear case against the applicant, no sympathy deserves to be shown to him.

05. At the outset it is to be noted that the investigation is completed and charge-sheet is filed. Therefore, further physical custody of the applicant is not required for the purpose of investigation. Now it is required to be seen as to what material has been collected against the present applicant. Perusal of the FIR lodged by PSI Ganesh Dhumal attached to Bhusawal Bazar Peth Police Station would show that he had received secret information and therefore after doing the necessary formalities i.e. sending information to superiors under section 42(1)(2) of the NDPS Act, he went along with his staff for raid. In the meantime, two panchas were fetched from Nagar Parishad, Bhusawal. At around 3.35 a.m. they reached near Nahata Choufuli. They found two vehicles coming one after another and therefore they were intercepted. The drivers were caught hold. Their names were asked and present applicant was one of the persons. Actually he stated to be resident of

Bhusawal itself and the drivers were from Kholwad, Tq. Kamrij, Dist. Surat, Gujarat State. After the inspection of the vehicles, they found two bundles kept below the watermelons. It is then stated that at the spot itself it was asked to the three accused person as to from where they had brought the Ganja. It was told to them that they had brought it from one Hamid Samshoddin (Palangwala) resident of - behind new Idgah, Bhusawal and he had asked that to be taken to Surat.

06. The statements of witnesses who are persons from the raiding party are on the similar line. After the formalities were done, panchanama was prepared. Sample was taken. The sample was sent for chemical analysis. The report states that samples Exh.1 to 13 are the samples of Ganja, which fall under section 2(iii)(b) of the NDPS Act. The first and foremost question, therefore, in these circumstances would be, when said Ganja is of commercial quantity and the applicant is from Bhusawal and co-accused are from Gujarat, then how they came together. At what point of time present applicant boarded the vehicle is definitely within the knowledge of the applicant. When on this prima facie case the fact is coming that said article was given by a person from Bhusawal, then there is every possibility that, that person would

have asked the applicant to accompany said vehicles for delivering those packets at Surat. The applicant is doing labour work. If it was only for loading and unloading, there could have been labours available at Surat also. It was then not necessary that the applicant would have been taken along with other two persons in both the vehicle. Substantial amount of Ganja was found. This is not a fit case whether the applicant should be released on bail. It is not required to be reiterated that how the narcotic drugs are affecting the people especially youth and therefore for such offences there cannot be sympathy. Hence, application stands rejected.

[SMT. VIBHA KANKANWADI, J.]