

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

34 BAIL APPLICATION NO.369 OF 2022

BANSILAL RAMESH GOSAVI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Deshpande Chaitanya C
APP for Respondents/State :
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CORAM : M.G. SEWLIKAR, J.
DATE : 4th April, 2022

PC.:-

By this application, applicant is seeking his enlargement on bail in connection with Crime No. 263/2021 registered with Chalisgaon Road Police Station, District Dhule under Section 20 and 22 of the N.D.P.S. Act.

2. Prosecution case in brief is that on 9th October, 2021 Police Inspector-Hemant Patil, the head of Special Squad received a secret information that some persons were carrying Ganja in auto-rickshaw no. MH-05-BG-4318. After completing initial compliance, the raiding party intercepted the concerned auto-rickshaw. Search was conducted in presence of a Gazetted Officer. Two persons after spotting the police party ran away from the spot. Three persons were nabbed. The time was 2.00 am. Police party found Ganja in three plastic bags kept in auto-rickshaw. Sample was

collected and was seized by following the relevant provisions under the N.D.P.S. Act. Accordingly, FIR came to be registered against the applicant.

3. Heard learned counsel Shri Deshpande for the applicant and learned APP Shri Wattamwar for the State.

4. Shri Deshpande submits that applicant is innocent. The two persons who ran away from the spot were the real culprits. Applicant being innocent was unaware of the contents of the gunny bags. Therefore, innocently and without being aware of the contents of the gunny bags, did not run away from the spot. He submits that applicant was the passenger in the said auto-rickshaw. Since he was the passenger no knowledge of the contents of the gunny bags can be attributed to the applicant. He placed reliance on the two orders passed by this Court in the case of **Shaikh Yusuf Shaikh Musa V/s. State of Maharashtra (B.A. No.336/2021)** dated 29th June, 2021 and **Mohammad Idris Mohammad Isaq V/s. State of Maharashtra (B.A. No.1190/2021)** dated 14th February, 2022. He, therefore, seeks release of the applicant on bail.

5. Learned APP submits that the applicant boarded the auto-rickshaw at 2.00 am. He submits that no one would travel at such an odd hour of the night. In addition to that he submits that applicant was not having

luggage also. Therefore, this belies his theory of being a passenger in auto-rickshaw.

6. Charge-sheet is filed.

7. On perusal of charge-sheet, it is seen that Ganja weighing 62 kg came to be seized in three gunny bags at 2.00 am in the night which is not normally a time one would undertake journey. Moreover, the place at which applicant boarded is also not mentioned. Ganja of 62 kg was found in the possession of the applicant. At this *prima facie* stage, it cannot be concluded that applicant was the passenger, especially on the background of Ganja being found in the auto-rickshaw. At this stage, it cannot be said that the possession was not conscious possession. In this view of the matter, I am not inclined to release the applicant on bail. Hence, the application is dismissed.

8. 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.

[M.G. SEWLIKAR, J.]