

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

937 BAIL APPLICATION NO.449 OF 2022

RIZWAN JAHIR KHAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Smt. Shweta Kothari h/f. Ghule Aniruddha B.
APP for Respondents/State : Mr. A.V. Deshmukh
...

CORAM : M.G. SEWLIKAR, J.
DATE : 8th April, 2022

PC.:-

By this application, applicant is seeking his enlargement on bail in connection with Crime No. 268/2021 registered with Jafrabad Police Station, District Jalna under Section 8(c), 20, 20(b), 22 of the NDPS Act.

2. Case of the prosecution in brief is that on 17th November, 2021 the informant received a secret information that two persons in auto rickshaw no.MH-21-BG-0631 were transporting Ganja from Jalna to Jafrabad via Chikli. Accordingly, informant who is a PSI laid a trap at Repala Phata. At 2.45 pm, one auto rickshaw having the same number was found coming. It was intercepted. Applicant was the driver and one Raj Mohite was the passenger. There were two bags in the auto. When Raj Mohite was interrogated about the contents of the bag, he gave evasive answers. On further interrogation,

Raj Mohite informed that one person was coming from behind by motorcycle by the name of Shaikh Raees. When Shaikh Raees spotted the police party, he fled from the spot leaving his Unicorn motorcycle there only. On checking the contents of these two bags Ganja weighing 25.50 kg was found in those bags. Sample was collected and referred to the Chemical Analyser. Report of CA is received indicating therein that the seized article was Ganja. Accordingly, offence came to be registered against the applicant.

3. Heard Smt. Kothari h/f. Shri Ghule learned counsel for the applicant and Shri Deshmukh learned APP for the State.

4. Smt. Kothari submits that applicant is an auto driver. Entire interrogation was made with passenger Raj Mohite. Raj Mohite himself provided information to the police that one Shaikh Raees was following the auto. She submits that when the police party was spotted, Shaikh Raees ran away from the spot. She submits that all these events demonstrate that applicant was not in conscious possession of the contraband article, rather the contraband article was in possession of accused-Raj Mohite.

5. Learned APP Shri Deshmukh submits that huge quantity of Ganja has been found with the applicant who is the driver of auto rickshaw. CA report shows that the material found in auto rickshaw was Ganja. He submits

that applicant was in conscious possession of Ganja.

6. Charge-sheet is filed.

7. On perusal of the charge-sheet, it is seen that the police party interrogated passenger-Raj Mohite. Raj Mohite gave information that one Shaikh Raees was following him on Unicorn motorcycle. Shaikh Raees on seeing police party took to his heels leaving the motorcycle there only. All these sequence of events demonstrate that Raj Mohite was in conscious possession of Ganja. Applicant was driving the auto. From the FIR also it can be gathered that applicant was not aware of the contents of the belongings of the passenger-Raj Mohite. The applicant has succeeded in bringing on record that there are reasonable grounds for believing that he is not guilty of such offences and since he has no criminal antecedents, he is not likely to commit any offence while on bail. Therefore, the twin conditions contemplated by Section 37 of the NDPS Act are fulfilled and, therefore, applicant is entitled to be released on bail. Applicant does not have criminal antecedents. Therefore, he is not likely to commit similar offence again. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

I) Application is allowed.

- II) Applicant be released on PR bond of Rs.30,000/- with one solvent surety in the like amount, in connection with Crime No.268/2021 under Section 8(c), 20, 20(b), 22 of the NDPS Act with Jafrabad Police Station, District Jalna on condition that he shall not pressurize the witnesses and shall not tamper the prosecution evidence.
- 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.

[M.G. SEWLIKAR, J.]