

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.541 OF 2022

SHAKIL KHAN S/O AYYUB KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. R. S. Deshmukh, Senior Counsel i/b Mr. D. R. Deshmukh, Advocate
for applicant.

Mr. S. B. Narwade, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28.04.2022

ORDER :-

1. The applicant has been arrested on 13.07.2021 in connection with Crime No.301 of 2021 registered with Amalner Police Station, Dist. Jalgaon for the offences punishable under Sections 8, 20, 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985. He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Senior Counsel Mr. R. S. Deshmukh for the applicant and learned APP Mr. S. B. Narwade for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. At the outset, it can be said that the investigation is complete and charge-sheet has been filed on 08.09.2021. Therefore, further physical

custody of the applicant is not required for the purpose of investigation. The evidence that has been collected against him is therefore required to be considered.

4. Perusal of the FIR would give a picture that it has been lodged by one Police Naik Milind Ashok Bhamre attached to Amalner Police Station. Information was received about transportation of narcotic drug. Therefore, a trap was arranged. It is then stated that when they were checking the vehicles, one motorcycle bearing No.MH-19-BC-5730 came and the driver took the motorcycle aside and stopped at distance from the police party and was about to give a phone call by taking out mobile from his pocket. After few minutes, the Swift Dzire car was asked to be stopped by the police party. The motorcycle driver told his name as Satish Bapu Choudhari. It could be seen that there were in all two persons in the car one was Aakash Ramesh Ingle, who was at the driver's seat and the present applicant was sitting on the seat besides driver's seat. The police party introduced itself and disclosed that they want to inspect the car. The inspection of the car has led to the discovery of *Ganja* in two plastic gunny bags in the dicky. After it was weighed, it was weighing 39 Kg. 800 gms. worth Rs.6,00,000/-. The applicant and co-accused came to be taken in custody from the spot and thereafter, the panchanama was drawn. The accused as well as muddemal was brought

to the police station and then the FIR was lodged. Thus, it can be seen that apparently there is no relationship between the driver and the present applicant. The applicant has come with the case that he had taken lift in the said vehicle and, therefore, had no knowledge about what was kept in the dicky. Learned APP has strong objection stating that Call Detail Record was not filed along with the charge-sheet, but it shows that there was constant communication between the person on the motorcycle as well as the present applicant and also the fact that the commercial quantity of *Ganja* was seized from the dicky of the car. Definitely, taking into consideration the fact that the offence is against the society at large, the present applicant does not deserve any sympathy.

5. At the outset, it is to be noted that the copy of the Call Detail Record, which has now been handed over to this Court was secured by Police Inspector/Investigating Officer by communication dated 14.07.2021. When that record was received has not been mentioned on the said record. What is part of the record is the call details of three mobiles was done and there is no evidence on record to show that which mobile number belongs to whom. The said electronic evidence is also not appended by the certificate under Section 65-B of the Indian Evidence Act and, therefore, even at this stage, it cannot be considered

at all. No doubt, the chemical analysis report states that it is *Ganja* that was seized at the relevant time, however, the prosecution is required to prove the conscious possession. When the applicant was sitting next to the driver and the *Ganja* was in the dicky, it cannot be said that the applicant was possessing it consciously. However, these are the *prima facie* remarks. The evidence that has been collected is in the form of the statements of witnesses. The witnesses are mostly police persons. Therefore, in order to prove the guilt of the applicant, some more exercise is required. Except the fact that the applicant was found in the said car, there is nothing. We need not go into the aspect as to whether mandatory provisions have been followed or not, because there is no specific challenge to the said effect at this stage. Except the call record, which is stated to be much prior in time to the FIR, cannot be corrected as there is no connecting evidence to show that the applicant was using a particular number and the co-accused were using a particular number of the mobile. Under such circumstance, the applicant deserves to be released on bail, however, conditions are required to be imposed. Hence, the following order :-

ORDER

- I) Application is hereby allowed.
- II) Applicant – Shakil Khan Ayyub Khan, who has been arrest in connection with Crime No.301 of 2021 registered with Amalner

Police Station, Dist. Jalgaon for the offences punishable under Sections 8, 20, 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985, be released on P. R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

III) He shall not tamper with the evidence of the prosecution in any manner.

IV) He shall not indulge in any criminal activity.

V) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm