

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

BAIL APPLICATION NO. 814 OF 2022

Gopi Lahu Kamble	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. R. R. Deshpande, Advocate h/f Ms Priyanka R. Deshpande,
Advocate for applicant
Mr. V. S. Badakh, APP for respondent - State

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CORAM : R. G. AVACHAT, J.
DATED : 12th JULY, 2022

PER COURT :-

This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0239/2021, registered with Tuljapur Police Station, District Osmanabad, for the offences punishable under Sections 20(b)(ii)(c), 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. Heard.

Perused the First Information Report (FIR). The FIR has been lodged by a Police Head Constable, Tuljapur Police Station on

15.07.2021. It is the case of the prosecution that the Police Inspector had received a tip-off that a vehicle (Chhota Hatti) bearing No.MH-25-AJ-3201 was heading towards Beed. In the vehicle, there were some persons carrying with them, ganja, narcotic substance. The vehicle was, therefore, chased and intercepted at hotel 'Sahyog'. There were total eight bundles. Those were checked to find ganja therein. The services of the Taluka Executive Magistrate were therefore availed for seizure panchanama. In the vehicle, there were two persons. One was a woman. Other one was the driver of the vehicle (applicant herein). It is also the case of the prosecution that there were total eight bundles containing total 156.71 Kilogram ganja worth Rs.31,34,200/- (Rupees Thirty One Lakh Thirty Four Thousand Two Hundred), the same came to be seized. Investigation of the crime was made and on completion thereof, the charge-sheet was led.

3. The learned Advocate for the applicant draws attention of this Court to a statement of Police Constable Mahesh Savare to contend that the applicant was simply driver of the vehicle. He was not in the know that the passengers in the vehicle were having ganja with them. As such, it is not the case of conscious possession. The

charge-sheet has been filed. According to him, it will take time for commencement and conclusion of the trial. He, therefore, urged for grant of the application.

4. The learned APP would, on the other hand, submit that it is a case of commercial quantity of narcotic substance. It is for the applicant to make out his defence of having not been in conscious possession of the contraband. According to him, the trial Court may be directed to expedite hearing of the case. He, therefore, urged for rejection of the application.

5. Considered the submissions advanced. Perused the relevant police papers. The statement of the Police Constable Mahesh Savare indicates that a tip-off was received that about eight persons, named in his statement, were carrying with them ganja and travelling in the vehicle (Chhota Hatti) bearing No.MH-25-AJ-3201. The vehicle was therefore chased. About 5 – 7 persons were in the body of the vehicle. Since he was alone, he did not dare to intercept the vehicle. He allowed the vehicle to go ahead upto road side hotel ‘Sahyog’. The vehicle stopped at the hotel. 5 -6 persons therein got down and went to the hotel. In the body of the vehicle, there was one lady, while the applicant was on driver’s seat.

6. From the aforesaid submissions, it does indicate that six more persons were travelling in the very vehicle. It is not known as to why the concerned Police Constable did not overpower the others who went to the hotel. His statement also silent to state as to why he did not go to the hotel to overpower those persons though they have named in the charge-sheet.

7. The applicant herein was admittedly the driver-cum-owner of the vehicle wherein the ganja was found. Seven other persons were travelling in the very vehicle. Whether the applicant was not in conscious possession of the ganja, would therefore be a conclusion to be drawn on appreciation of the evidence that may be produced before the trial Court. It will take time for commencement and resultant conclusion of the trial. It is, therefore, desirable to grant the applicant, bail. Hence, following order is passed:-

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0239/2021, registered with Tuljapur Police Station, District Osmanabad, for the offences punishable under Sections 20(b)(ii)(c), 29 of the

Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, on his executing P. R. bond in the sum of Rs.40,000/- (Rupees Forty Thousand) with surety bond of the like amount.

- (iii) The applicant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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