

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

BAIL APPLICATION NO.818 OF 2022

Rahul Bapu Kuwar

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.N.L.Choudhari, Advocate for applicant
Mr.S.P.Sonpavale, APP for respondent

CORAM : R.G. AVACHAT, J.

DATE : JULY 29, 2022

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0263 of 2021 registered with Chalisgaon Road Police Station, Dist.Dhule.

2. Heard learned counsel appearing for the parties.

3. The applicant is alleged to have been found in possession of Ganja weighing 62 kgs. He is, therefore, charge-sheeted for the offence under Sections 20 and 22 of the Narcotic Drugs And Psychotropic Substances, Act, 1985 ("N.D.P.S. Act.", for short)

4. The FIR has been lodged by Police Head Constable – Borse on 10.10.2021. As per the case of the prosecution, a secret information was received that an auto-rickshaw of a particular registration number was to pass by certain area carrying Ganja. It was, therefore, decided to lay a trap. All the arrangements, therefore, were made. The police officials accompanied by an independent panch witness went near Hotel Desh-Videsh on Mumbai-Shirpur Highway. The members of the trap party noticed that said auto-rickshaw was approaching. It was, therefore, intercepted. There were four persons besides driver of the auto-rickshaw. Two of them had shared the driver's seat. The applicant herein was on the rear seat of auto-rickshaw. In the back portion and rear seat of the auto-rickshaw, three gunny bags containing Ganja packets were found. A panchnama of seizure thereof was drawn. Sample thereof in requisite quantity was sent for chemical analyays. The C.A. report indicates the same to be contraband Ganja.

5. According to learned counsel for the applicant, the applicant was not in conscious possession of the contraband article. He was travelling as a fare paying passenger. No sooner the auto-

rickshaw was intercepted, two persons, who had shared the driver's seat, fled away. The contraband may be attributable to them. He, therefore, urged for grant of bail.

6. Learned APP would submit that it is a commercial quantity. Provisions of Section 37 of the N.D.P.S. Act would apply to the case. It is for the applicant to prove that he was not in conscious possession of the contraband Ganja. The same can be done during trial only. He, therefore, urged for rejection of the application.

7. Scrutiny of all the police papers indicates that there is no statement of any independent witness. What has been disclosed by the applicant and the co-accused during panchnama is said to be the prosecution case. Needless to mention that the incriminating material stated by the applicant herein is inadmissible in evidence. As per the prosecution case itself, from the auto-rickshaw intercepted by the trap party, two persons, who had shared the driver's seat, fled away. True, they were arrested later on and are being prosecuted as accused nos.4 and 5. Except what has been stated by the applicant or the co-accused to the police officials, there

is, *prima facie*, nothing to indicate that contraband Ganja had been brought by the applicant herein for being sold or delivered to the co-accused. As such, it is a case for grant of bail.

8. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0263 of 2021 registered with Chalisgaon Road Police Station, Dist.Dhule, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence in any manner.

[R.G. AVACHAT, J.]

KBP