

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

14 BAIL APPLICATION NO.1172 OF 2021

Arun S/o Ambadas Malve
Age: 38 years, Occ.: Rickshaw Driver,
R/o. Durga Colony, Chikalthana,
Aurangabad. ..Applicant

VERSUS

The State of Maharashtra
Through Police Station,
MIDC Cidco, Aurangabad.
Tq. & Dist.Aurangabad. ..Respondent

...
Advocate for Applicant : Shri Ravindra Vitthal Gore
APP for Respondent : Shri G.O.Wattamwar

...
WITH
BAIL APPLICATION NO.1482 OF 2021

Jagannath s/o Shrimant Lathe
Age: 27 years, Occu.:
R/o.Choudhary Colony,
Chikalthana, Aurangabad.
Tq. and Dist.Aurangabad.
(At present in Central Prison,
Aurangabad) ..Applicant
(Accused No.2 in
FIR / Chargesheet)

VERSUS

The State of Maharashtra
through the Officer Incharge,
MIDC Cidco Police Station,
Aurangabad City,
Dist.Aurangabad. ..Non-applicant/
Respondent
(Prosecution)

...
Advocate for Applicant : Shri R.S.Deshmukh, Senior Counsel
i/b. Shri D.R.Deshmukh
APP for Respondent : Shri G.O.Wattamwar

...

CORAM : M.G.SEWLIKAR, J.

DATE: 14th February, 2022

PER COURT :-

1. Both these applications are being disposed of by common order as they arise out of the same crime.

2. These applications are filed under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in connection with Crime No.0244 of 2021, registered with M.I.D.C. Cidco Police Station, Dist.Aurangabad, under Sections 22(b), 22(c) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

3. Case of the prosecution can be summarised as under:-

On 6th June, 2021 at 05:30 p.m. while patrolling, Shri Amol Deshmukh (Police Sub-Inspector) got a secret information that one Shrikant Bansod was carrying Ganja in Innova Car MH-20 AA-4413 from Darakonda (Andhra Pradesh) via Jalna to Aurangabad. Accordingly, raiding party was formed. Raiding party reached Cambridge School , Chikalthana at 11:10 a.m. In accordance with the secret information, they noticed an Innova Car bearing registration No.MH20 AA-4413 coming from Jalna. The said

vehicle was intercepted. On noticing the Police party, the Driver of Innova Car started speeding by Beed Bypass. Soon thereafter, the raiding party started chasing the Innova Car bearing No.MH20 AA-4413. Gopal Nagar Police Station was intimated about the chase and accordingly Police Inspector by the name of Shri Avinash Aghav stopped the said Innova Car bearing No.MH-20 AA-4413 at 11:50 a.m. On seeing the raiding party, two persons sitting in the Innova Car ran away. The persons, who did not run away was apprehended. Driver told his name as Shrikant Bansod and the person who did not run away disclosed his name as Jagannath Lathe i.e. applicant in Bail Application No.1482 of 2021. Driver Shrikant and applicant Jagannath disclosed name of one person who ran away to be Bhikan Rithe. Both of them did not know the name of the other one. They knew only the first name i.e. Sunny. All the formalities contemplated under the NDPS Act were followed. On taking search, it was found that in the boot of the Innova Car, 32 plastic bags containing Ganja were found. Samples were taken and they were referred to the Chemical Analyzer (CA). CA has submitted report which indicates that material found in the boot of the Innova Car was Ganja. Accordingly, report came to be lodged on the basis of which crime under the aforesaid Sections came to be registered against the applicants.

4. After completion of investigation, charge-sheet came to be filed.

5. I have heard Shri R.V.Gore, learned counsel for the applicant in Bail Application No.1172 of 2021 and Shri R.S.Deshmukh, learned Senior Counsel for the applicant in Bail Application No.1482 of 2021.

6. When this Court expressed its disinclination to grant any relief to the applicant in Bail Application No.1172 of 2021, Shri Gore, learned counsel for the applicant, on instructions, sought permission to withdraw the application. Accordingly, permission is accorded.

7. So far as applicant in Bail Application No.1482 of 2021 is concerned, Shri Deshmukh, learned Senior Counsel submits that the applicant is suffering from Meningomyelocoele and is paraplegic in both the legs. He submits that because of his disability, he cannot be imputed with the knowledge of the contraband article Ganja being carried in Innova Car. He submits that in the previous application for bail before the learned Special Court, the applicant had described himself as a Cleaner whereas in the subsequent application before the learned Special Court,

the applicant described himself as a passenger. He submits that the learned Sessions Court simply on this ground rejected the application of the applicant without giving any finding about the possession of the contraband article Ganja with the applicant. He submits that there is no evidence of ownership of Innova Car. Prosecution alleges that Innova Car belongs to Arun Malve (applicant in Bail Application No.1172 of 2021). He submits that in the absence of any evidence of ownership, simply because the applicant in Application No.1482 of 20212 was in touch with Arun Malve does not impute him with the knowledge of the contraband article being carried in the vehicle. He submits that except this, there is no evidence to indicate that the applicant was in possession of the contraband articles. He was simply a passenger in the Innova Car. He did not know the persons who ran away from the Innova Car.

8. Shri Wattamwar, learned APP for the respondent-State submits that Arun Malve (applicant in Bail Application No.1172 of 2021) is the owner of the Innova Car. According to the prosecution, Arun Malve is the purchaser of the said Ganja and it was being transported from Darakonda (Andhra Pradesh) to Aurangabad via Jalna. He submitted that there is proof of ownership of the vehicle concerned. He submits that the

Jagganath Late (applicant in Bail Application No.1482 of 2021) was found sitting in Innova Car in which contraband article was being transported. He was in constant touch with co-accused Arun Malve. He submits that all these circumstances cumulatively indicate that applicant was in possession of contraband article. For this purpose, he placed reliance on the following cases :-

- a) *Judgment of Hon'ble Supreme Court in the case of Union of India through Narcotics Control Bureau, Lucknow Vs. Md.Nawaz Khan, Criminal Appeal No.1043 of 2021 (Arising out of SLP (Cri) No.1771 of 2021), dated 22nd September, 2021.*
- b) *Madan Lal and Another Vs. State of Himachal Pradesh [(2003) AIR (SC) 3642].*

9. It is not in dispute that the applicant Jagannath was travelling in the Innova Car. Applicant Jagannath himself is not sure as to in what capacity he was travelling in the Car. Learned Additional Sessions Judge has observed that in the previous application, the applicant described himself as a Cleaner. In the subsequent application, the applicant described himself as a passenger. If he is a Cleaner, naturally it can be said that he had the knowledge of the contraband being carried in the vehicle.

10. Once it is found that a persons is travelling in the vehicle in which contraband articles were found, *prima-facie* it indicates that the contraband article was in his possession. It is for the person travelling in the Car to prove that he was not aware of the contraband articles being carried in the Car. This fact is within his special knowledge and therefore, he is required to discharge this burden. In the case of **Md. Nawaz Khan** (Supra) the Hon'ble Supreme Court found following circumstances crucial for determining whether the occupant of the Car was in conscious possession of contraband articles. In Paragraph No.30, the Hon'ble Supreme Court held thus :

"30. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37 :

- (i) The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;*
- (ii) The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him.*
- (iii) The quantity of contraband found in the vehicle is of a commercial quantity; and*
- (iv) The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused."*

11. In the case at hand, the factual position is no different. The

applicant was found travelling in the vehicle all the way from Darakonda (Andhra Pradesh) to Aurngabad till the time it was intercepted. The applicant was found in constant touch with Arun Malve (applicant in Bail Application No.1172 of 2021). Arun Malve *prima-facie* appears to be the owner as there are statements of witnesses which indicate that Arun Malve purchased the vehicle from Shaikh Abrar. The quantity of the contraband found in the vehicle is commercial quantity and contraband was concealed in the boot of the vehicle. Two persons who were occupants of the Car ran away from the spot of the incident. In addition to this, there is one more circumstance indicating involvement of the applicant Jagannath in the present crime. When the Innova Car was signaled to stop, the Driver sped up and the raiding party had to conduct a chase to apprehend the occupants of the Car. These circumstances clearly indicate that the applicant Jagannath was in conscious possession of the contraband article found in the boot of the Car. In this view of the matter, there is *prima-facie* evidence against the applicant Jagannath. Hence, I am not inclined to grant any relief to the applicant Jagannath. Hence, the order :-

ORDER

- i) Bail Application No.1172 of 2021 stands disposed of as withdrawn.

- ii) Bail Application No.1482 of 2021 is dismissed.
- iii) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M.G.SEWLIKAR)
JUDGE

SPT