

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

BAIL APPLICATION NO.1451 OF 2022

Vaibhav Ranba Ujagare

...Applicant

Versus

The State Of Maharashtra and another

...Respondent

...

Advocate for Applicant : Mr. Swapnil B. Joshi and Mr. Chetan B. Choudhari h/f J.P. Legal Legal Associates.

APP for Respondent/State : Mr. V.M. Kagne

...

CORAM : S.G. MEHARE, J.

RESERVED ON : 11th OCTOBER, 2022

PRONOUNCED ON : 19th OCTOBER, 2022

ORDER:-

1. The applicant is seeking bail under Section 439 of the Criminal Procedure Code in Crime No.346 of 2021 registered with Police Station MIDC, District Latur, for the offences punishable under Section 8(c), 20 (b) (ii) (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).

2. The prosecution case, in brief, is that on 01.06.2021 at about 20.05 hrs, the complainant/police inspector received the secret information that a car bearing No.MH-24-AF-2095 of Maruti Suzuki is stationary in front of Zee Little Mount English School carrying the Ganja. He immediately gave the information to the Additional Superintendent of Police and SDPO, Latur. One Police Sub-Inspector

was posted at the said place to watch the activities of the persons in the said car. Then he did the usual formalities of collecting the panchas, forming the raiding party, etc. Gazetted Officer Naib Tahsildar was also with the police. The police trapped the said vehicle. The persons in the raiding party took the search of each other, and nothing incriminating was found with them. At 22.29 hours, the information was given to the Superintendent of Police and other officers by wireless. Then, the raiding party proceeded to execute the raid. The applicant was in the driving seat of the said vehicle. The search was taken after giving the information about their right to have a search before the Gazetted Officer. Then, the vehicle was searched. The police found 43 plastic pack bags containing green colour seed mix Ganja. The samples from the said bags were collected. The applicant was apprehended on the spot on 01.06.2021. Since then, he has been languishing behind bars.

3. Learned counsel for the applicant would submit that the person who received the secret information did not comply with Sections 42 and 50 of the NDPS Act. A charge sheet has been filed. The applicant had no concern with the vehicle. However, he made a phone call to the owner of the vehicle. He reached the spot of the incident at 04.30 pm on the very same day. There is no evidence of posting the police officer for surveillance. Referring to the general diary details on page 26, he vehemently argued that the secret

information was not sent to the superior, but he was informed by telephonic message. The secret information was received at 20.05 hrs, and the raid was taken at 22.40 hrs. So it was quite possible for the officer leading the raid to send a copy of the written information as all the superior police officers have their offices in Latur city. The applicant has no nexus with drug peddlers. The vehicle was found in a dense locality. The description in seizure panchnama differs from the description of the goods mentioned in the investigation note dated 03.06.2021. The applicant is a permanent resident of Latur. The co-accused had been released on bail. The contrabands were packed; hence, the applicant did not know its contents. The applicant may be released on bail.

4. Learned APP has opposed the application. He would argue that he was in conscious possession; hence, he cannot deny that he was unaware of the contents of the packet. The statement of the owner of the vehicle is material. He states that the applicant took his vehicle under the pretext of attending the funeral but brought the contraband from Hyderabad. The compliance of Section 42 has been done. The secret information was reduced to writing in the station diary, and the intimation was given to the superior. The Gazetted Officer was present, and the applicant's right under Section 50 of the NDPS Act was protected. The offence is serious; hence, he is not entitled to bail.

5. The applicant has relied on the cases of Sholadoye Samuel Joy Vs. The State of Maharashtra, 2022 ALL MR (Cri) 1420.

In the case of Sholadoye, the ratio laid down in the case of Karnail Singh Vs. the State of Haryana, (2009) 8 SCC 539 has been considered. The view in the case of Karnail Singh is consistent. The Hon'ble Apex Court, in the case of Karnail Singh, has laid down the law that compliance with Section 42 of the NDPS Act is mandatory. The law is also settled that compliance with Section 50 of the NDPS Act is mandatory. Under Section 50 of the NDPS Act, it is imperative on the part of the police officer to appraise the person intended to be searched of his right to be searched before the Gazetted Officer or Magistrate.

6. The FIR reveals that after the trap, the police appraise the persons sitting in the car, the object of the search. The persons in the raiding party had given their personal search, and immediately the search was started. Section 50 was to appraise the person intended to be searched and his right to be searched before the Gazetted Officer or Magistrate. The FIR is silent that the applicant was appraised of his right to be searched before the Gazetted Officer though he was a member of the raiding party. Therefore, it cannot be said that Section 50 of the NDPS Act has been complied with. The charge sheet further reveals that the secret information was reduced to writing in the general station diary, and the information was given to the

superior on the telephone. In the FIR, it was mentioned that the police officer had received secret information that the car stationary in front of the English School had contraband. He has transmitted the information to his superior. The FIR is silent that soon after, the secret information received was reduced to writing, and that written information has been supplied to his superior. The purport of Section 42 (2) of the NDPS Act is to take down the information in writing, or the officer concerned has to record the grounds for his belief under proviso to subsection 1, and within 72 hours, he has to send a copy thereof to his official superior. The mandate of law appears to have not been complied with in the case at hand. Therefore, in view of the ratio laid down by the Hon'ble Apex Court in the catena of judgments, the applicant is entitled to bail. Hence, the following order :

ORDER

- (i) Bail application is allowed.
- (ii) The applicant, Vaibhav Ranba Ujagare, be released on bail on executing P.B. and S.B. of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount in Crime No.346 of 2021 registered with Police Station MIDC, District Latur for the offences punishable under Section 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the condition that he shall not tamper with the prosecution witnesses and shall not involve in the similar crime.

- (iii) The applicant shall not protract the trial.
- (iv) Needless to state, the observations recorded in this application are *prima facie* and confined to the bail applications only.
- (v) The trial Court shall not be influenced by the findings recorded in this order during the trial.

(S.G. MEHARE, J.)

Mujaheed//