

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1598 OF 2021

Satish S/o Bapu Chaudhari

Applicant

Versus

The State of Maharashtra

Respondent

Mr. R.S. Deshmukh, Senior Counsel instructed by Mr. D.R. Deshmukh, Advocate for the applicant.

Mr. V.S. Badakh, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 11th FEBRUARY, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 0301/2021 registered with Amalner Police Station, Dist. Jalgaon, for the offences punishable under Sections 8, 20, 22 of Narcotic Drugs and Psychotropics Substances Act.

2. Prosecution case is that the informant received information that 'Ganja' was being transported in Car bearing No. Mh 19 M 0738 from Erandol to Amalner. After receiving the tip off,

arrangement of raid was made. The Police Officers were checking the vehicles in front of Indrani hotel at Savarkheda Shivar. They noticed Motorcycle bearing No. MH 19 BC 5730 coming from Dharangaon. The motorcyclist was stopped. The motorcyclist stopped the Swift Desire coming from behind. The name of the driver of Swift Desire was Akash Ingale and the name of the occupant of the car was Shakil Khan Ayub Khan. On taking search of the car, 'Ganja' was found stored in twenty packets in two plastic gunny bags. Sample as per the rules was taken. Weight of the 'Ganja' was 39.800 kilograms which means it was more than the commercial quantity. On these allegations, First Information Report came to be lodged against the applicant.

3. Heard Shri Deshmukh, learned Senior Counsel instructed by Mr. D.R. Deshmukh, learned counsel for the applicant and Shri Badakh, learned APP for the State.

4. Learned Senior Counsel submits that the only role of the applicant is that he was leading the Swift Desire car in which 'Ganja' worth Rs.6,00,000/- was found. He submits that except this evidence, there is nothing on record to show that the applicant was

in conscious possession of 'Ganja'. The only allegation against the applicant is that he was in contact with one Vijay Mohite who is accused in this offence. He is absconding. He submits that the learned Sessions Judge has observed that the applicant was in constant touch with Vijay Mohite but said Vijay Mohite was not the occupant of the car. He submits that the conditions required under Section 33 of the Narcotic Drugs and Psychotropic Substances Act do not get fulfilled.

5. Learned APP Shri Badakh submits that the absconding accused Vijay Mohite is the person who had arranged transportation of 'Ganja' from Erandol to Amanler. The applicant was in constant touch with the absconding accused. This shows his complicity in the offence.

6. Charge-sheet is filed. On perusal of the papers, it is seen that the only allegation against the applicant is that he was leading the Swift Desire car in which 'Ganja' weighing 39.800 kilograms was found stored. Applicant is alleged to have been in contact with the absconding accused Vijay Mohite. It seems that while in police custody, the applicant had given a statement that transportation of

'Ganja' was arranged by absconding accused Vijay Mohite. This is the only evidence to show the complicity of accused Vijay Mohite. Except this, there is no evidence to show that accused Vijay Mohite had any connection with the alleged crime.

7. In terms of Section 33 of the Narcotic Drugs and Psychotropic Substances Act, before releasing the accused, the twin conditions have to be satisfied; i) that there is no possibility of conviction and ii) that the applicant is not likely to commit similar offence again. On the basis of the scanty evidence collected by the prosecution, it cannot be said that there is any possibility of conviction. The applicant does not have any criminal antecedent. Therefore, it cannot be said that the applicant is likely to commit the similar offence again. There is no likelihood of the applicant fleeing from justice. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand) with one solvent

surety in the like amount in connection with Crime No. 0301/2021 registered with Amalner Police Station, Dist. Jalgaon, for the offences punishable under Sections 8, 20, 22 of Narcotic Drugs and Psychotropics Substances Act, on condition that he shall not tamper the prosecution evidence and shall attend the dates fixed in the trial.

iii) Application is disposed of.

iv) 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