

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

**25 BAIL APPLICATION NO.1724 OF 2021**

Vijay Sanjay Thakre  
Age: 25 years, Occu.: Labour,  
R/o. Ajnale Gaon, Near Kalikamata Mandir,  
Tq. & Dist.Dhule. ..Applicant

VERSUS

The State of Maharashtra ..Respondent

...  
Advocate for Applicant : Shri Rohit P. Patwardhan  
APP for Respondent : Shri G.O.Wattamwar

...  
**WITH  
BAIL APPLICATION NO.130 OF 2022**

Awejkhan S/o Maheboob Khan  
Age: 27 years, Occu.: Nil,  
R/o. Mominpura, Lotakaranja,  
Tq. & Dist.Aurangabad. ..Applicant

VERSUS

The State of Maharashtra ..Respondent

...  
Advocate for Applicant : Shri C.C.Deshpande  
APP for Respondent : Shri G.O.Wattamwar

...  
**WITH  
BAIL APPLICATION NO.1190 OF 2021**

Mohammad Idris S/o Mohammad Isaq  
Age: 32 years, Occu.: Private Service (Job)  
as Driver with Star Cabs and Holidays  
(Tours and Travels)  
at Lane No.15, Near Madani Gate,  
Bari Colony, Aurangabad.  
R/o. Garam Pani Area,  
Chhawani, Aurangabad.  
Taluka and District Aurangabad  
[At present in Aurangabad  
Central Prison, Aurangabad] ..Applicant

(Accused No.3 in  
FIR/Charge sheet)

VERSUS

The State of Maharashtra  
Through the Incharge  
Police Station Officer,  
MIDC Cidco Police Station,  
Aurangabad City,  
District 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: 14<sup>th</sup> February, 2022**

**PER COURT :-**

1. All the three applications are being disposed of by common order as they arise out of the same offence.
2. These are the applications under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in Crime No.0170 of 2021, registered with M.I.D.C. Cidco Police Station, Dist.Aurangabad, under Sections 8(c), 20(b)(ii)(c), 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.
3. It is case of the prosecution that Shri Rahul Rode, Assistant

Police Inspector received secret information that contraband article was being transported in Maruti Swift Desire Car bearing Registration No.MH-47 C-7528. Accordingly, the raiding party was formed and they started checking the vehicles. Near Raj Motors, Jalna Road, a two wheeler of HF Delux Company without number was seen coming from Cambridge Square. On enquiry, he told his name as Vijay Thakre and told that one Maruti Swift Desire Car was coming from behind. The said Car bearing Registration No.MH-47 C-7528 was signaled to stop. The Driver disclosed his name as Mohammad Idris Isaq (Applicant in Bail Application No.1190 of 2021). The occupant of the Car disclosed his name as Awajkhan Maheboob Khan (Applicant in Bail Application No.130 of 2022). They were having a bag. When they were asked about the contents of the bag, they gave evasive answers. Therefore, the bag was checked. It was found containing Ganja worth Rs.9,43,860/-. The weight was 47 Kilo 193 Grams. Accordingly, panchanama was drawn. Sample was taken. It was sent to the Chemical Analyzer (CA) for analysis. Thereafter, CA report has been received. Charge-sheet came to be filed.

4. When this Court expressed its disinclination to grant any relief to the applicants in Bail Application Nos.1724 of 2021 and

130 of 2022, Shri R.P.Patwardhan, learned counsel and Shri C.C.Deshpande, learned counsel for the respective applicants, on instructions, sought permission to withdraw their applications. Accordingly, their applications are disposed of as withdrawn.

5. So far as applicant in Bail Application No.1190 of 2021 is concerned, Shri R.S.Deshmukh, learned Senior Counsel for the applicant submits that the vehicle is a tourist vehicle. Charge-sheet shows that the vehicle has carriage permit. The applicant is a Driver of the said vehicle. He, therefore, submits that the applicant cannot be imputed with the knowledge of Ganja being carried in a bag by accused Awejkhan.

6. Learned APP for the respondent-State submits that the applicant did not state as to what was there in the bag. He simply pleaded ignorance. This shows his complicity in the offence.

7. Admittedly, applicant was Driver engaged by the owner Shaikh Shoaib Shaikh Yakeen. The vehicle particulars show that a Permit No.MH2021 CC00038 was also issued and permit category was Luxury Taxi Car. This indicates that the vehicle was a tourist vehicle. The Driver was engaged by the owner.

Therefore, the Driver cannot be imputed with the knowledge of the bag containing Ganja. In this view of the matter, twin conditions contemplated under Section 37(1) of the NDPS Act i.e. (a) there is no possibility of conviction against the applicant and (b) the applicant is not likely to commit similar offence again, are satisfied. The applicant has no criminal antecedents. In this view of the matter, I am inclined to release the applicant in Bail Application No.1190 of 2021 on bail

8. Shri Patwardhan, learned counsel for the applicant in Bail Application No.1724 of 2021 and Shri Deshpande, learned counsel for the applicant in Bail Application No. 130 of 2022 submit that CA report is received but it is not placed on record. The applicants may be permitted to move the Sessions Court for bail since the CA report has been placed on record in the trial Court.

9. Applicants in Bail Application No.1724 of 2021 and in Bail Application No. 130 of 2022 are at liberty to approach the Sessions Court for bail, if CA report is not filed.

10. In view of this, the following order is passed :

**ORDER**

- i) Bail Application No.1190 of 2021 is allowed.
- ii) Applicant in Bail Application No.1190 of 2021 (Mohammad Idris S/o. Mohammad Isaq) be released on P.R.Bond of Rs.50,000/- (Rs.Fifty Thousand only) with one solvent surety in the like amount, in connection with Crime No.0170 of 2021, registered with M.I.D.C. Cidco Police Station, District Aurangabad, under Sections 8(c), 20(b)(ii) (c), 29 of the NDPS Act and on condition that he shall not tamper prosecution evidence and shall attend the dates fixed in the trial.
- (iii) Bail Application Nos.1724 of 2021 and 130 of 2022 are disposed of as withdrawn.
- iii) All the three Bail Applications are 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**