

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2232 OF 2021

ATIK YUNUS SHAIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Lokesh Zade i/b. Mr.Raju Mate, Advocate for the Applicant.

Ms.Pallavi Dabholkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 8th DECEMBER 2021
PRONOUNCED ON : 3rd JANUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.684 of 2019 registered with Police Station Bhosari, Pune, for offences punishable under Section 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

AVK

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2 On 13th July 2019 while the informant and other staff members were on patrolling duty, some of the staff members got an information through informer that two persons in a car had brought contraband for sale on a road near the e-Regional Office. Accordingly, a raiding team was formed and the informant spotted a grey coloured Swift car in a stationary condition near the e-Regional office. A person was sitting on driver seat while another was unloading the white coloured gunny bags from the rear side of the car. The person sitting on the driver seat after noticing the raiding police team approaching the car, ran away with the car towards the Pune-Nashik highway. However, the applicant was arrested on the spot with gunny bags containing ganja weighing 101 kilograms and 125 grams. The informant, accordingly, lodged the First Information Report (FIR).

3 Mr.Lokesh Zade, learned counsel for the applicant, submits that since the raiding team had proceeded towards the spot of incident on the basis of definite prior information, the informant ought to have complied with the mandate of Section

42 of the NDPS Act as the same was obligatory on his part. However, there is no such compliance of Section 42 of the NDPS Act in the present case, and therefore, on this count alone the applicant deserves to be enlarged on bail.

4 Smt.Pallavi Dabholkar, learned APP, on the other hand, opposed the submissions by contending that the applicant was found in possession of ganja in a public place. Therefore, there is no question of compliance of Section 42 of NDPS Act. Rather, in the facts and circumstances of the case, Section 43 of the NDPS Act will be attracted. Since the applicant was found in possession of huge quantity of ganja, the application deserves to be rejected.

5 Perused the investigation papers including the FIR. Admittedly, when the secret information was received, it was to the effect that two persons have brought ganja in a car for sale. When the informant and raiding party members visited the place, they found a grey coloured swift car in which a person was

sitting on the driver seat while the present applicant was unloading white coloured sacks containing ganja. The moment the driver saw the raiding party approaching the car, he fled away with the car from the spot leaving the applicant with contraband behind. Thus, the FIR prima facie and clearly shows that the applicant was found with gunny bags containing ganja in the public place and not in a car, as has been tried to be made out by the learned counsel for the applicant.

6 In the case of **Karnail Singh vs. State of Haryana**¹ the Hon'ble Apex Court made following observations at paragraph 26:

“26 The material difference between the provisions of [Sections 42](#) and [43](#) is that [Section 42](#) requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, [Section 43](#) does not

¹ (2009) 8 Supreme Court Cases 539

contain any such provision and as such while acting under [Section 43](#) of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful.”

7 From the above discussion it is clear there shall be no applicability of Section 43 of the NDPS Act, in as much as, the applicant was found in a public place with the contraband. The Chemical Analyzer’s Report is also on record which shows that what was found in possession of the applicant was sample of ganja. This being so, there is clear bar of Section 37(1)(ii) of the NDPS Act.

8 In view of above, I am not inclined to allow the application. Hence, the following order :

ORDER

- (i) The application is rejected.
- (ii) However, the trial Court is directed to expedite the trial.

(V. G. BISHT, J.)