

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2444 OF 2022

Shaikh Mehmood Shaikh Mehboob ...Applicant
Versus
State Of Maharashtra ...Respondent

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Mr. S. T. Pandey a/w Mr. Arvind Singh, Ms. Angela Singha, Ms. Anima Mishra, Ms. Kajal Upadhyay and Mr. Anuj Singh i/by SBG Law Advocates, Advocate for the Applicant.

Mr. M. G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th OCTOBER, 2022

PER COURT:

1. The applicant is arrested on 21.02.2022 in connection with C.R. No. I-788 of 2021 registered with Malegaon Taluka Police Station, Dist. Nashik for offences punishable under Sections 20(b), 22 of the NDPS Act. The FIR was registered on 17.10.2021.

2. The case of the prosecution is that on 17.10.2021 information was received that contraband Ganja would be transported in vehicle by some persons. Investigating agency lead the trap and waited near the spot. They saw car wherein the number which was provided in the

information. The car was intercepted. One of the person was sitting in the car ran away. Driver of the car was apprehended. Search of the car resulted in recovery of Ganja weighing 137 kg 965 gram. The person driving vehicle was apprehended. Panchnama was recorded. During the interrogation said person allegedly disclosed that he had brought Ganja on instructions of Yakub and it was to be delivered to him. Investigation proceeded. During the course of investigation the applicant was arrested on 21.04.2022 under the belief that the applicant is Yakub as disclosed by co-accused who was apprehended on the spot.

3. Learned advocate for the applicant submitted that there is no evidence to show that involvement of the applicant in the crime. Although, it is the case of the prosecution that the accused No.1 was acting on the instructions of Yakub, there is no evidence to indicate that the applicant is same person referred to by the accused No.1. The entire charge-sheet does not indicate that the name of the applicant is Yakub or he is known as Yakub and involved in transporting the contraband seized by Police.

4. Learned APP submitted that the accused No.1 was apprehended and he disclosed that the contraband was brought by Yakub and it was delivered to him. The applicant is the same person who was referred by co-accused. CDR indicate that there were calls between applicant and accused No.1 till 21.10.2022. The case relates to recovery of Ganja. It is commercial quantity.

5. The entire case of the prosecution is based on the statement of the co-accused. There is no corroborative admissible evidence to establish the involvement of the applicant in the crime. The contraband was recovered from the vehicle which was driven by co-accused. It is alleged that the calls were from 15.10.2022 till 21.10.2022. The accused No.1 was in custody of the police from 17.10.2022. Hence, question of any calls beyond 17.10.2022 does not arise. There are no criminal antecedents against the applicant. In the absence of any cogent evidence showing involvement of the applicant, the applicant cannot be detained in custody. Assuming that the applicant is considered to be Yakub, there is no recovery from applicant. Except statement of the co-accused, there is no evidence to establish the involvement Yakub or the applicant.

ORDER

- (i) Criminal Bail Application No.2444 of 2022 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. I-788 of 2021 registered with Malegaon Taluka Police Station, Dist. Nashik on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (iv) The applicant shall report concerned Police Station once three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (v) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)