

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

CRIMINAL BAIL APPLICATION NO. 3662 OF 2021

Mahadev Vishwanathrao Shinde

.. Applicant

Versus

State of Maharashtra

.. Respondent

Mr. Sujit Nikam, Advocate for the Applicant.

Mr. R. M. Pethe, APP for the Respondent-State.

CORAM : VINAY JOSHI, J.

DATE : 05th MAY, 2022.

P.C.:

. The applicant is seeking regular bail in Crime No. 84 of 2021, registered with Mahatma Gandhi Police Station, District Sangli, for the offence punishable under Sections 8(c) , 20(2)(B) and 22(b) of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The applicant is arrested in said crime on 18th March, 2021 and since then he is in custody. Investigation is over and charge-sheet has been filed.

2. It is the prosecution case that on 18th March, 2021, the police received information that contraband article namely Ganja was being transported by one Maruti Suzuki car. On receiving said information, the police arranged for raid. The police have called two panchas, photographer and scalar and accordingly went to the spot. It was noticed that one Maruti

Suzuki car bearing registration No. MH-13-AZ-3808 was parked at the side of road. There were four persons sitting in the car and their movements were suspicious. The police apprehended all of them and inquired about their names. While taking thorough search, several brown colour packets containing Ganja were found. Ganja was weighing 20 kg 700 g, therefore the report.

3. Besides usual grounds, it is argued that seized Ganja was not of commercial quantity. Though police have mentioned the weight of Ganja as 20 kg 700 g, however on calculation, seizure was less than 20 kg i.e. below commercial quantity. It is argued that the applicant was mere driver, it cannot be said that the applicant was in conscious possession of seized contraband. The State opposed bail by contending that the applicant was found with contraband article at the place of occurrence. There was no plausible explanation about seizure of Ganja. The seized Ganja was of commercial quantity, therefore, the applicant does not deserve for bail. Besides that, seriousness of offence has been pointed out.

4. Considered the submissions and gone through the entire charge-sheet. It reveals from police paper that the police have apprehended a car on suspicion. The applicant alongwith three others were apprehended from the car. While taking thorough search, large quantity of Ganja was found in the dicky of the car. Statements of various persons have been recorded. The applicant has disputed that the seized Ganja was of commercial quantity. The applicant's learned Counsel would submit that Ganja was weighted alongwith package, therefore, though it was of less than

commercial quantity, it was wrongly shown as 20 kg 700 g. It is submitted that there is no mandatory compliance of Section 41 of NDPS Act.

5. On facts it is argued that the applicant was a freelanced driver, therefore he was unaware about the contraband articles. According to the applicant, unless there is conscious possession of contraband, liability cannot be fastened. In support of said contention, reliance is placed on the decision in the case of **Smt. Jintabi, V/s. State**¹. In said case the Court has observed that the term possession implies exclusiveness, which relates to “dominion” over the contraband articles. In that light it is seen that the contraband articles were lying in dicky of the car. The applicant has tendered some documents to show that he was serving as freelance driver, therefore, *prima facie* the applicant has brought the material to show that he was unaware about the contraband, of course it has to be established during the course of trial. Though police paper indicates that the applicant was found in the car, however, it is a matter of trial to establish that he consciously possessed the contraband articles. No material is brought on record to show that the applicant is likely to indulge in similar offence. Admittedly, there are no antecedents against the applicant. Since last one year he is in jail. Already investigation is complete and charge-sheet has been filed. Having regard to all above facts, the applicant can be released on bail by putting him on certain terms. In view of that, the following order:

ORDER

- i) The application is allowed.

¹ 1996 CRI. L. J. 4305

- ii) The Applicant Mahadev Vishwanathrao Shide is released on bail in connection with the Crime No.84 of 2021, registered with Mahatma Gandhi Police Station, District Sangli, for the offence punishable under Sections 8(c), 20(2)(B) and 22(b) of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, on his furnishing P.R. bond of Rs.50,000/- with one or two sureties, in the like amount.
- iii) The Applicant shall attend concerned Police Station on first Sunday of each month in between 10:00 a.m. to 12:00 noon till conclusion of trial.
- iv) The Applicant shall provide his cell number and residential address to the concerned Investigating Officer.
- v) The application stands disposed in above terms.

(VINAY JOSHI, J.)