

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

CRIMINAL BAIL APPLICATION NO. 2785 OF 2022

Jahirabi Shafikhan Pathan ...Applicant
Versus
State Of Maharashtra ...Respondent

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Mr. Aniket Vagal, Advocate for the Applicant.

Mr. A. A. Palkar, APP for the Respondent – State.

Mr. Satish B. Raut, Daund Police Station, Pune Rural, Present.

CORAM : PRAKASH D. NAIK, J.
DATE OF RESERVING ORDER : 20th OCTOBER, 2022.
DATE OF PRONOUNCEMENT OF ORDER : 19th DECEMBER, 2022

PER COURT:

1. The applicant is seeking Bail in C.R. No. 435 of 2019 registered with Daund Police Station, for the offences punishable under Sections 8(c), 20(b)II(b) read with Section 29 of the Narcotic Drugs and Psychotropic Substances (for short 'NDPS') Act.

2. The prosecution case is as under:-

On 4th August, 2019 the complainant Pandit Sampat Manjre Police Head Constable attached to Daund Police Station and others were on petrolling duty at Pune-Solapur Highway. At about 10.00 a.m. they saw Mahindra Veriot Car bearing No. MH-12-GZ-1076 halted for removing puncture. They went near the car and found that two male persons and one female with the small child were

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occupying the car. While they inquired with the occupants of car, the male persons were found nervous and they ran away from the spot. The complainant and his associates suspected foul play. They searched the vehicle. They opened the dickey of car. They found some packets in the car. There was strong smell to the contents of packets. They tried to search persons who ran away from the spot. They could not succeed. Information was given to the higher officers. The Police inquired with the women sitting in the car. She gave her name as Joharabai Shafikhan Pathan. She gave name of one person amongst the two who ran away from the spot as Raju Pawar. She was informed that there is Ganja in the vehicle and she is required to be searched. She was also asked whether she intends to allow her search in the presence of any Gazetted Officer or Magistrate. It is her right to do so and that if she wants to be searched in the presence of such officers, the required arrangement would be made. She consented for conducting the search by Police. In the search, the Police recovered twenty four packets of Green leaves, tops, seeds etc. The weight of contraband was 118 kg, and 300 grams samples were obtained. It was ganja FIR was registered. The applicant was arrested. She was produced before the Court for remand. She was remanded to custody. While she was produced before the Court on 5th August, 2019 her Police custody was sought

for investigation to find out from where she brought the Ganja and whether the Ganja was taken for sale. Whether any other persons were involved in the crime. Whether the applicant is involved in trafficking of Narcotics substance. The applicant was remanded to Police custody till 9th August, 2019. The case diary of investigation was produced before the court. Subsequently investigation was completed and charge-sheet was filed.

3. The applicant preferred an application for Bail before the Court of Sessions at Baramati, Pune, the application was rejected by order dated 14th January, 2020.

4. Learned Advocate for the applicant submitted as under:-

- i. The applicant has no connection with the contraband.
- ii. The applicant had no knowledge of contraband, kept in the dickey of car.
- iii. The application was not in conscious possession of Ganja found in the car.
- iv. The investigation could not reveal the involvement of the applicant with the co-accused.
- v. The applicant was allegedly found in the car with a child.
- vi. The applicant was surprised with the raid. The other persons

ran away

vii. The applicant is in custody since last three years.

viii. The applicant is suffering from various ailments.

xi. She is aged around sixty years. She is the case of PL. HIV since nine years. She is under going treatment for HIV, anorexia, fatigue and severe anaemia. She was admitted in Sasoon General Hospital, Pune from 12th August, 2021 to 21th August, 2021 for treatment of anaemia. She was diagnosed to be suffering from Pulmonary Tuberculosis. Her CT scan of Chest (Thorax) showed multiple consolidation and fibro chemical changes most likely of tubercular. She was given Anti Tuerculosis treatment at Sasoon General Hospital, Pune. On 24th September, 2021 and 21st October, 2021 for similar complaints of Severe anaemia, chest pain and breathlessness. She was given treatment for her complaints and advice to continue the Anti Tuberculosis and ATR treatment. Reliance is placed on the medical case papers including the medical report date 26th October, 2021 issued by Chief Medical officer Yerwada central prison, Pune.

5. Learned APP submits that the offence is of serious nature. The applicant was found in the car. Ganja was recovered from the car. The applicant was in conscious possession of Ganja. The

ground urged by the applicant cannot be considered for granting bail. The defence will have to be proved in trial. Reliance is placed on the decision of the Supreme Court in the case of Union of India through Narcotics Control bureau Lucknow Vs. Md. Navaz Khan (2021)10 SCC Page 100.

6. The charge-sheet indicates that, the complainant and others were on petrolling duty. The vehicle in question was found halted. The work relating to puncture of tyre was conducted by the inmates of car. There were three persons in the car. Applicant was allegedly sitting in the car alongwith a small child. The Police had questioned the occupants of car. The demeanour of two other persons was suspicious. They were nervous. They ran away from spot and disappeared. They could not be traced. The applicant continued to occupy the car with her small child. The complaint or statement of witnesses does not indicates that she was nervous or showed any signs of being partner in crime with other persons. The Police could not manage to apprehend the two other persons. There was no attempt by the applicant to run away from the spot. It is not the case of the prosecution that she had shown the contraband lying in the dickey of the car. The entire charge-sheet does not indicate that the applicant had a knowledge that there was a

contraband in the car. The applicant was arrested and she was produced before the Court for remand. The charge-sheet does not indicate that, the investigation revealed that the applicant was carrying the contraband or was involved in carrying the contraband in connivance with the other persons. It was a case of chance recovery. She is in custody since last three years. In the case of Union of India Vs. Md. Navaz Khan (Supra), relied upon by learned APP, it was observed that, the High Court ought not to have granted bail to the accused, on the ground of absence of recovery of the contraband from his possession. In the car in which accused were travelling, heroin was found. The Court has dealt with the conscious possession and referred to previous decision dealing with the issue of conscious possession. The facts of the said case could be distinguished. The factual matrix of the said case indicate that, the Narcotic Control Bureau had received information that three persons are proceeding with heroin / morphine in car. There was CDR on record which showed link between all the accused. Hence apex Court had observed that it cannot be accepted that accused was not in conscious possession of contraband. In the present case it was a chance recovery. There was no information that the applicant was to travel with the other accused with contraband. The apex court referred to earlier decision in the case of Dharampal

Singh Vs. State of Punjab (2010) 9 SCC 608 wherein it was observed that knowledge of possession of contraband has to be gleaned from the facts and circumstances of the case. The Apex Court also referred to the decision in the case of Mohan Lal Vs. State of Rajasthan (2015) 6 SCC 222, in which case it was observed that the term “possession” could mean physical possession with animus custody over the prohibited substances with animus, exercise of dominion and control as a result of concealment or personal knowledge as to the existence of contraband and the intention based on his knowledge.

7. In the present case for the reasons stated herein above, the restrictions under Section 37 could not be impediment to grant bail to the applicant.

ORDER

- i. Criminal Bail Application No.2785 of 2022 is allowed.
- ii. The applicant is directed to be released on bail in connection with C. R. No.435 of 2019 registered with Daund Police Station, on executing P. R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

iii. The applicant shall report concern Police Station once in a month on 1st Saturday in between 11.00 a.m. to 1.00 p.m. for a period of six months and thereafter once in three months on 1st Saturday between 11.00 a.m. to 1.00 p.m. till further order;

iv. The applicant shall not tamper with the evidence. The applicant shall attend the trial Court on the date of hearing of the case unless exempted by the Court.

v. The observations made in this Order are *prima facie* for considering application for bale and the trial Court shall not be influenced by the same during trial.

vi. Application stand disposed off.

(PRAKASH D. NAIK, J.)