

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3135 OF 2021

Nilesh Hiranman Pawar

..Applicant

V/s.

The State of Maharashtra

..Respondent

SNEHA
NITIN
CHAVAN

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Mr. Mateen Shaikh for the Applicant.

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

CORAM : C.V. BHADANG, J.

DATE : 17 FEBRUARY 2022

P.C.

1. The Applicant, apprehending his arrest, in connection with the investigation of Crime No.229 of 2021 registered with Bhigwan Police Station, Dist. Pune under Section 20(b) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is seeking pre-arrest bail.

2. The prosecution case is that on 19.09.2021, the present Applicant and the co-accused, who was a pillion rider were proceeding on a motorcycle. They were intercepted in the incident, the present Applicant is alleged to have fled from the spot. However, the police have recovered 16 kgs of *Ganja* in a gunny bag from the accused No.2 i.e. the pillion rider.

3. I have heard the learned counsel for the parties. Perused record.

4. It is submitted by the learned counsel for the Applicant that Applicant has no conscious possession of the contraband and the quantity recovered is not commercial quantity. Accused No.2 is released on bail and the custodial interrogation of the Applicant is not necessary.

5. The learned APP submitted that the contraband was carried in a gunny bag on a motorcycle and therefore, conscious and constructive possession has to be considered.

6. I have considered the submissions made. Prima facie it appears that the contraband was recovered from a gunny bag which was being carried on a two wheeler. The applicant is said to have fled from the spot. Considering the quantity of the contraband and the fact that it was being carried on a motorcycle, prima facie, it cannot be accepted that there was no conscious possession of the contraband by both the accused.

7. The learned Sessions Judge has also observed that the vehicle was belonging to the present Applicant. Although, the learned counsel for the Applicant stated that there is no documentary evidence to show that the vehicle was belonging to the Applicants, prima facie, the fact remains that the *Ganja* was

recovered from the co-accused who was a pillion rider on the two wheeler which was being driven by the present Applicant. In the result, no case for granting of pre-arrest bail is made out.

8. The criminal application is rejected.

9. At this stage, the learned counsel for the Applicant on instructions seeks two weeks time for the Applicant to surrender before the Investigating Officer.

10. In such circumstances, two weeks time is granted to the Applicant to surrender.

(C.V. BHADANG, J.)