

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

ANTICIPATORY BAIL APPLICATION NO. 73 OF 2024

Shaikh Irfan Shaikh Budan	..Applicant
Versus	
The State of Maharashtra	..Respondents

Mr. S. T. Pandey a/w. Anuj Singh a/w. Anima Mishra a/w. Kajal
Upadhyay a/w. Ritu Singh i/b. SBG Law for Applicant.
Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 1 MARCH 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 788 of 2021, registered at Malegaon Taluka Police Station, Nashik Rural, on 17.10.2021, under Sections 20(b) and 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'N.D.P.S. Act').
2. Heard Mr. Pandey, learned counsel for the applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.
3. This is the second time, the applicant has approached

this Court for his anticipatory bail. On the first occasion, he had preferred A.B.A.No.3273 of 2022. The earlier bench (Coram: Smt. Anuja Prabhudessai, J.) on 23.11.2022, passed the following order:

“1. Learned counsel for the Applicant, after arguing the matter for some time, seeks leave to withdraw the application. Leave is granted.

2. Application is dismissed as withdrawn.”

4. In spite of this clear order, the applicant did not surrender and remained absconding; and again this application is filed.

5. Learned counsel for the applicant submitted that, there are changes in the circumstances. He submitted that the charge-sheet in this case is now filed; this is the first change in circumstance. Secondly, the other two accused are released on bail. This is the second change in circumstance. He further submitted that the applicant has not committed any offence and he is sought to be arrested on the basis of the statement of the co-accused, who was on inimical terms with the applicant and, therefore, he is falsely implicated. The applicant had nothing to do with the offence.

6. Learned APP opposed these submissions. According to her, at this stage, there is sufficient material against the applicant. His custodial interrogation is necessary. A huge quantity of *Ganja* weighing 137 Kgs. and 965 grams was seized. Considering the seriousness of the offence, custodial interrogation of the applicant is absolutely necessary.

7. First of all, filing of the charge-sheet against the co-accused wherein the present applicant is shown as an absconding accused, cannot be a change in circumstance in favour of the present applicant. He is taking advantage of his own wrong. This conduct is not acceptable. The accused cannot wait till the charge-sheet is filed against the arrested accused and cannot take advantage of that fact to contend that since the charge-sheet is filed, his custodial interrogation is not necessary. This is clearly taking advantage of his own wrong. Secondly, the other co-accused is granted regular bail, therefore, the applicant cannot claim parity in this anticipatory bail application. Because, considerations for anticipatory bail and regular bail are quite different. In spite of that, in the interest of justice, I have considered the merits of the

matter.

8. The F.I.R. is lodged by P.S.I. Sandeep Patil, attached to Crime Branch, Nashik Rural. He has stated that, on 17.10.2021 their unit received a secret information that an Ertiga Car bearing No.MH48-A-6889 was transporting *ganja*. It was coming from Chalisgaon and going towards Malegaon. The police party arranged to conduct raid. At about 2.35a.m. the car was seen travelling from that road. It was intercepted. Since the police intercepted that car, the person sitting next to the driver ran away. It is the prosecution case that the said person was the present applicant. The driver was caught on the spot. The search of the car was taken. It was found that there were six gunny bags in the dickey and on the back seat there were 66 packets totaling 137 kg. 965 gm. of *ganja* worth Rs.6,89,825/-. On this basis the F.I.R. is lodged.

9. The charge-sheet contains panchanama and the statements of the raiding party members. From the statements in the charge-sheet including the F.I.R. it is quite clear that the

incident is not false. A huge quantity of *ganja* was seized as per the secret information. The applicant's name was given by the co-accused. At this stage, there is sufficient material against the present applicant. The applicant's earlier attempt to seek anticipatory bail from this Court had failed. The applicant had remained absconding for more than one and half year. His custodial interrogation is necessary. The applicant is not available. In this view of the matter, he cannot be granted protection U/s.438 of the Cr.p.c.

10. The application is rejected.

(SARANG V. KOTWAL, J.)