

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1217 OF 2025

Sunil Madhavrao Mohite @ Belgar	.. Applicant
Versus	
State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO. 5063 OF 2024

Govind Mohite	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Ms. Zehra Charania a/w Ms. Mallika Sharma i/by Mr. Ayaz Khan for Applicant in BA 1217/25
 - Mr. Hitendra J. Dedhia, APP for State in BA 1217/25
 - Ms. Ashwini Achari a/w Mr. Taraq Sayed & Mr. Anish Pereira for Applicant in BA 5063/24
 - Mr. Rushikesh M. Pethe, APP for State in BA 5063/24

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2025

P. C.:

1. Heard.
2. Bail Application No. 5063/24 which is listed at Sr. No. 45 is also taken up for hearing along with present Bail Application as it is in respect of same crime. Applicant in BA 1217/25 is arraigned as accused No. 3 whereas Applicant in BA 5063/24 is arraigned as accused No. 5. Facts in the case relating to apprehending the accused persons with the alleged contraband are undisputed. Accused Nos. 1

an 2 have been apprehended along with the alleged contraband in the subject vehicle which is a truck in which the alleged contraband was being transported. Though it was recorded in the order dated 03.02.2025 passed in BA 5063/25 that accused No. 3 is the driver of truck but it is not so when the witness statement appended at page No. 232 of the said Application is seen.

3. Ms. Charania, learned Advocate for Applicant - accused No. 3 in BA 1217/15 would draw my attention to page No. 75 of the said Application which is the first information report and submitted that first information report is lodged and recorded at 22:28 Hrs. on 15.02.2024 in respect of the incident which has taken place between 10:10 Hrs. and 17:30 Hrs. She would submit that if the same is juxtaposed with the panchnama i.e. seizure panchnama appended at page No. 110 of the Application, it can be seen that the said panchnama commenced on 15.02.2024 at 21:50 Hrs and got over on 23:20 Hrs. It however specifically on page No. 1 states and records that Crime Number i.e. FIR Number which has been lodged in the present crime. Her submission is that if the panchnama was conducted between 21:50 Hrs and 23:20 Hrs and crime was lodged at 22:28 Hrs, the mention of FIR number in the panchnama is intriguing and raises suspicion. To counter this submission, Mr. Dedhia, learned APP would submit that during carrying out of the panchnama, officer

of the prosecution obtained Crime Number on phone and therefore stated so in the panchnama which has been carried out. Be that as it may, this Court has already taken a view in respect of the aforesaid issue and the prosecution needs to address the Court on that aspect. That apart it is also seen that insofar as the alleged contraband is concerned, the substance which has been recovered from the co-accused persons is not covered by the definition of Ganja under the said Act which is particularly seen from the CA report which has been annexed and appended to the Application. In the seizure panchnama which has been referred to and relied upon by the prosecution there is also mixing of the contraband which needs to be addressed. Applicant in BA No. 1217/25 has been arrested merely on the recorded statement of the co-accused person which is covered by the decision in the case of ***Tofan Singh Vs. State of Tamil Nadu***¹ and the Applicant can be enlarged on bail. Needless to state that complicity of the Applicant in the present crime can be determined in trial. Applicant is incarcerated for more than 1 year and 1 month and therefore in view of the aforesaid *prima facie* facts, the present Application needs to be considered.

4. In so far as Applicant No. 5 in BA 5063/24 is concerned, this Court in paragraph No. 4 in the order dated 03.02.2025 has noted the

1 (2021) 4 SCC 1

case of the prosecution and the same is *prima facie* based on CDR records in respect to the relationship of the said accused persons with accused No. 3 and the conversation that has taken place between them.

5. Mr. Dedhia and Mr. Pethe, both the learned APPs will take appropriate instructions from the concerned Investigating Officer (IO) in the present matter on the aforesaid issues and apprise the same to this Court on the next adjourned date.

6. Both the Applications be tagged together and adjourned to **21st March, 2025**. To be placed under the caption "**First on Board**".

[MILIND N. JADHAV, J.]

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