

Bail order below Exh. 4 in Spl. Case No. 94/2021.

Pintu Ambadas Shinde

Vs.

The State of Maharashtra

CNR NO: MHOS-01002037-2021

(Osmanabad (Rural) Police Station Cr. No. 84/2018)

1] This is second bail application filed by the applicant/accused for regular bail in Cr. No. 84/2021 registered with Osmanabad Rural Police Station for the offence punishable under section 20 (b) (ii), 29,8(c) of N.D.P.S.Act.

2] During pendency of the investigation he was filed first bail application No.218 /2021, which came to be rejected on 27/07/2021. Thereafter, he has filed bail application before the Hon'ble High Court, i.e. bail application no. 959/2021 which came to be withdrwn by him on 23/8/2021.

3] In this application it is averred by the applicant/accused that he has not committed any offence. He is falsely implicated in the crime. There is no any direct, indirect or circumstantial evidence against him. Investigation of the case has concluded and charge-sheet came to be filed by the I.O. Therefore, further detaintion is not required. He has fixed place of residence and possessing immovable property. There is no possibility of his absconding. He will not cause obstruction in the investigation. He is ready to abide each and every condition imposed by the Court, while releasing on the bail.

04] The respondent/State has filed Say at Exh. 6 and objected to the application on the ground that co-accused Raju Ambadas Shinde has absconded from the date of incident. Ganja of commercial quantity was found in the car occupied by the accused/applicant. There is possibility of repeatation the crime and to help the absconded accused, if accused/applicant released on bail.

The possibility of tampering with the prosecution evidence can not be ruled out. There is sufficient material against the applicant/accused showing his involvement in the crime. Therefore he may not be released on bail.

05] Heard both sides.

06] In short it is the case of the prosecution that, on 15/4/2021 informant Dattatraya Surwase, Police Inspector of Osmanabad Rural Police station received information about transportation of Ganja from vehicle no. MH-03-BW-9056. He has communicated said information to superior officer and obtained permission to effect the raid. He along with other police staff made entry in the station dairy at 21:04 hours and left towards Yedshi. At about 22:05 hours they have seen above car near hotel Kalika. However, the driver of car was not in the vehicle. Applicant/accused was found sitting on left side front seat whereas co-accused were found while sitting on the back seat. Police had carried the search of said vehicle and found 27 Kg 989 gram Ganja total worth of Rs. 2,79,890/-. After drawing necessary samples for the Chemical Analyzer, remaining Ganja was seized in presence of panchas. Hence, F.I.R. lodged against accused/applicant and other accused.

07] Learned counsel appearing on behalf of accused submitted that the Hon'ble High Court has released the co-accused namely Swati Shinde on regular bail in Bail Application No 716/2021 vide order dated 23/8/2021. He has placed on record copy of said order. The Hon'ble High Court has made following observation in para no. 7 of said order while deciding the said bail application

“Admittedly, Ganja weighing 27.989 kg, which is a commercial quantity, was found in the boot of the car. Nothing has been brought on record to show that the applicant had any personal relations or official relations with the accused who was driving the car and other accused who was sitting in the car. Prosecution could not collect any evidence to show that the applicant was instrumental in procuring these contraband articles. There is nothing on record to show that the applicant was in conscious possession of contraband articles. She is neither the owner of

the car nor she had any blood relation with the other accused. Therefore, the possibility of the applicant being gratuitous passenger cannot be ruled out. There is nothing on record to show that the applicant had criminal antecedents. Therefore, there is no possibility of the applicant committing the similar offence again. In this view of the matter. I am inclined to release the applicant on bail. Hence the following order”

08] After perusal of FIR and investigation papers, it appears that, on 15/4/2021 applicant/accused and co-accused were caught by police while travelling from the car no. MH-03-BW-9056 at Yermala on Barshi-Latur road. Applicant/accused was sat on the front seat of the Car, whereas co-accused were on the rear seat. Statements of a members of raiding party i.e. police naik - Ganesh Patil, Sachin Morale, PHC- Sudhir Tugaonkar, Prakash Khandare, PC- Amol Gawali, Dipak Khandebharad and Jaishree Chavan etc, shows that after inquiry applicant/accused gave information that contraband article Ganja was kept in the Dickey of the Car. After giving the opportunity of search has provided under Section 50(1) of the N.D.P.S. Act, raiding party has found 27 Kilo and 989 gram Ganja total worth Rs. 2,79,890/- in the Dickey of Car. Statements of independent witness Rahul Deshmukh also corroborates to above things.

09] Name of absconded car driver was initially stated as Raju Kalidas Kale by the applicant/accused. However, during investigation it was transpired that, name of said car driver is Raju Ambadas Shinde who is real brother of applicant/ accused. I.O. has collected information of car No MH-03-BW-9056 from R.T.O. Osmanabad. Said car is standing in the name of co-accused Raju Ambadas Shinde.

10] Police has seized Ganja 27 Kilo and 989 gram from the Car. It is commercial quantity. After drawing the sample, it was forwarded for Analysis. Report of C.A. shows that Ganja detected in the Sample.

11] Investigation papers further shows the compliance of mandatory provisions under Section 42 and 50 of the N.D.P.S. Act

by the Investigating Officer.

12] Material placed on record shows that, applicant/accused was aware that seized Ganja was kept in the dicky of said Car. Absconded accused Raju was driving the said car at the time of incident. Said Raju is the real brother accused/applicant. The car is standing in the name of co-accused Raju. In these circumstances, it appears that, applicant/accused was not a gratuitous passenger. Possession of the Ganja in the Car was within his knowledge and conscious possession. In this circumstances, the observations of the Hon'ble High Court in para no. 7 of the order are not applicable to accused/applicant for getting the bail on the ground of parity. There is bar u/s. 37(1)(b) of N.D.P.S. Act to release him on regular bail. Because there is sufficient material showing his involvement in the crime. If he is released on bail possibility of his involvement in the similar nature of crime can not be ruled out. The possibility of his flee away or tampering with prosecution evidence also can not be ruled out.

13] In the conclude, applicant /accused is not entitled to release on regular bail. Hence, the order.

ORDER

Bail application is hereby rejected.

Date : 02/12/2021.

(V. G. Mohite)
Additional Sessions Judge
Osmanabad.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order/Judgment are same word to word as per the original Order/Judgment.

Name of Stenographer	S.B.Bansode (Grade-I)
Name of Court	Additional Sessions Judge, Osmanabad
Date of order/Judgment	02/12/2021
Date of order/judgment signed by presiding officer.	02/12/2021
Judgment/Order uploaded on	02/12/2021