

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

CRIMINAL BAIL APPLICATION (ST) NO. 1950 OF 2020

Sunil Genu Jagtap
V/s.

.. Applicant

The State of Maharashtra

.. Respondent

**WITH
CRIMINAL BAIL APPLICATION (ST) NO. 2297 OF 2020**

Sharad Prakash Karke
V/s.

.. Applicant

The State of Maharashtra

.. Respondent

Mr. Pranil Sonawane for the Applicant in BA(ST)/1950/2020.

Mr. Sachin Gite for the Applicant in BA(ST)/2297/2020.

Mr. Arfan Sait, APP for the Respondent-State in BA(ST)/1950/2020.

Mrs. M.H. Mhatre, APP for the Respondent-State in BA(ST)/2297/2020.

CORAM : C.V. BHADANG, J.

**DATE : 12th October, 2020
(Through Video Conference)**

P.C.

1. The Applicants, along with co-accused, are facing prosecution for the offence punishable under Section 8(c), 20 (C) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short) before the learned Special Court at Nashik. There are in all

13 accused, out of which accused Nos.11 to 13 are yet to be apprehended. The Applicant Sunil Jagtap is accused No.2, while the Applicant Sharad Karke is accused No.9.

2. The prosecution case is that on 05.11.2019 a secret information was received by police Naik Mahale that some persons, are bringing ganja from Andhra Pradesh in a Swift Dzire Car. The information was, accordingly, communicated to the superior and API Kulkarni recorded the same and a team of police officers led by PI. Ananda Wagh of Crime Branch laid a trap along with panchas at old Chehdi Jakat Naka. It is said that at 17.00 hrs three cars including 2 Swift Dzire cars bearing Nos. MH-02-BP-5521 and MH-41-C-6720 and one Ertiga bearing No. MH-04-GM-8883 were intercepeted. Each of the cars was having three occupants including the driver. The Applicant Sunil Jagtap was found sitting in the Swift Dzire car bearing No. MH-02-BP-5521 from which three gunny bags containing the contraband ganja weighting 76 kgs 200 grams was recovered.

3. The Applicant Sharad Karke was found in Ertiga Car bearing No. MH-04-GM-8883 from which two gunny bags containing ganja weighting 51 kgs 100 grams was recovered. From the second Swift

Dzire car bearing No. MH-41-C-6720, three gunny bags containing ganja weighting 76 kgs 150 grams was recovered. The total quantity of the contraband recovered is 203 kgs 450 grams. After the search and seizure and on the basis of a complaint lodged by Police Constable Ravindra Bagul, an offence at Crime No. 696 of 2019 was registered and after completion of investigation, a chargesheet is filed.

4. The learned Special Judge has refused to release the Applicants on bail *inter alia* on the ground that the quantity of the contraband recovered is a commercial quantity.

5. I have heard the learned Counsel for the Applicants and learned A.P.P. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. Mr. Sonawane, the learned Counsel for the Applicant submits that the Applicant Sunil Jagtap was a mere gratuitous passenger. He submitted that the Applicant was coming from Nagar to Nashik and asked for a lift and thus, the Applicant was not having knowledge of the contraband allegedly being carried in the said car. The learned Counsel strenuously urged that there is no conscious possession of

the contraband by the Applicant, which would be evident from the fact that the Applicant was sitting on the passenger seat. He submitted that there are certain lapses in the investigation. In this regard, he pointed out that the source from where the contraband was allegedly obtained and masterminds have not been investigated upon. He submitted that there is no investigation from the point of financial transaction having regard to the nature of the quantity, which is said to be recovered. He also pointed out to the intimation under Section 50 of the Act, in order to submit that even the name of the present Applicant is shown to be type written on the intimation which would improbalise the theory that such intimation was served on the spot. He submitted that the Applicant has no criminal antecedent and his family members are suffering from Covid and therefore, the Applicant be released on bail.

7. Mr. Gite, the learned Counsel for the Applicant Sharad Karke has adopted the arguments on most of the grounds. It is submitted that the Applicant was also a mere passenger in the car without knowledge of the alleged contraband being carried in the said car. He submitted that the investigation is complete and the chargesheet is filed and in the submission of the learned Counsel this is not a

case where the Applicant needs to be detained behind the bar pending the trial.

8. The learned A.P.P. has opposed the applications. It is submitted that the matter involves commercial quantity, where the presumption under Section 54 of the Act is attracted. It is submitted that this is not a case where the contraband is recovered on account of personal search of the accused and therefore, Section 50 of the Act is not applicable. It is submitted that even otherwise, the panchnama shows that the raiding party had carried laptop etc. for the purpose of raid and therefore, there is nothing unusual in the intimation under Section 50 showing the name of the Applicant, which is typed on the laptop.

9. The learned APP has pointed out the statement of Anil Khairnar, who is the owner of Swift Dzire car bearing No. MH-02-BP-5521 and statement of Mr. Dnyaneshar Narwade, who is the owner of the Ertiga car. He points out that Mr. Narwade has stated that the Applicant Sunil Jagtap had carried the Ertiga Car. The learned APP pointed out that Applicant Sunil Jagtap was driving the Ertiga Car before the raid and at the time of raid, he was found in the white

Swift Dzire car being No. MH-02-BP-5521. He submitted that Applicant Sharad Karke was found in the Ertiga car.

10. The learned A.P.P. has placed reliance on the judgment of the Supreme Court in the following cases:

- i) *Yasihey Yobin and Anr. v/s Department of Customs, Shillong, 2014 Cri. L.J.1617*
- ii) *Mohan Lal V/s. State of Rajasthan, 2015 Cri. L. J. 2811*
- iii) *Kulwinder Singh and Anr. v/s. State of Punjab, 2015 Cri. L.J. 3160*
- iv) *Dilbagh Singh v/s. State of Punjab, AIR 2016 SC(Supp) 145*
- v) *Arutla Shankaraiah v/s. State of Andhra Pradesh, (2015) 15 Supreme Court Cases 235.*

11. I have carefully considered the circumstances and the submissions made. Prima facie it appears that this is a case involving the recovery of commercial quantity of ganja from the individual car, inasmuch as the commercial quantity in relation to ganja is notified as 20 kgs and above. The Applicants were found travelling in Swift Dzire car and Ertiga Car from where the contraband is said to be recovered. Prima facie having regard to the nature of the recovery from the car, this cannot be said to be a case

of recovery of the contraband on personal search. Thus, the provisions of Section 50 of the said Act may not be attracted. Even otherwise, the panchnama records that the raiding party had carried a laptop, therefore, as rightly submitted on behalf of the State, there is nothing unusual with the name of the Applicant/accused being typed on the intimation under Section 50 of the Act. In any event, any such circumstances cannot at this stage be said to be sufficient to make the recovery doubtful.

12. The defence about the Applicants being mere passengers also cannot be accepted at this stage. Although, the Applicant Sunil Jagtap claims that he had requested for a lift, as he wanted to come from Nagar to Nashik, the statement of Dyaneshwar Narwade would show to the contrary. The Applicant Sharad Karke has not even claimed that he had obtained a lift. The Supreme Court in the case of Kulwindar Singh (*supra*) was concerned with a similar situation in which the defence about the accused being a mere passenger in the vehicle from where the contraband was recovered, was not accepted. It is necessary to note that this is not the stage where the evidence can be examined or appreciated in details, else otherwise, it may prejudice either the prosecution or the defence at the trial.

13. The contention that there is no investigation on the aspects of the masterminds also *prima facie*, cannot be accepted as chargesheet names the Accused Nos. 11 to 13, who are yet to be apprehended.

14. As noticed earlier, the case involves recovery of commercial quantity of contraband, where the presumption under Section 54 of the Act will be attracted. Thus, no case for grant of bail is made out. In the result, both Criminal Applications are hereby, dismissed.

15. It is made clear that the observations herein are essentially of a *prima facie* nature for the limited purpose of deciding plea for bail and learned Special Judge shall not be influenced by the same, at the trial.

C.V. BHADANG, J.