

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISCELLANEOUS APPLICATION NO.51 OF
2015
IN
CRIMINAL APPLICATION (BAIL) NO. 30 OF 2015.
AND
CRIMINAL APPLICATION (BAIL) NO. 30 OF 2015.

Mr. Hans Joachim Nikolai,
Aged 56 years, German National,
Resident of Anjuna, Bardez, Goa
Presently Lodged at Mapusa
Judicial Lock Up, Mapusa, Goa. Applicant.

Versus

1. State,
(Rep. By Officer-In-Charge,
ANC Police Station, Panaji,
Goa).
2. The Spl. Public Prosecutor,
Panaji -Goa. Respondents.

Ms. V. Poulekar, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Coram:- K. L. WADANE, J.
Reserved on:26th February, 2015.
Pronounced on:- 27th February, 2015.

ORDER:

Heard Ms. V. Poulekar, learned Advocate for the applicant and Mr. S. R. Rivankar, learned Public Prosecutor for the respondents.

2. This is an application filed by the applicant for bail. The present applicant was arrested on 5.3.2014 in connection with Crime No.8/2014 for the alleged possession of 51 gms MDMA under Section 22(c) of the NDPS Act, 1985. Since then he is behind the bars. It is stated by the learned Advocate for the applicant that the applicant had been diagnosed with cancer of bladder in the month of July, 2013 and was taking medical treatment in Max Hospital, New Delhi. But after his arrest, he is not receiving proper medical treatment. Therefore, on that ground, the applicant is seeking bail/interim bail for the purpose of taking medical treatment from the hospital at New Delhi. Learned Advocate for the applicant argued that applicant has an appointment of the Doctor at Delhi who is his family doctor and such appointment is fixed on 4.3.2015 in order to take proper medical treatment. The applicant may be released on bail or at least on interim bail. In support of her submissions, learned Advocate for the applicant has relied upon the judgment in the case of ***Syed Abdul Ala Vs Narcotic Control Bureau, CDJ 2003 Kar HC 127.***

3. On the other hand Mr. Rivankar, learned Public Prosecutor has opposed the application for bail on the grounds that the offence committed by the applicant is serious in nature

and the contraband found in his possession is of commercial quantity. As such, the applicant is not entitled to be released on bail. The learned Public Prosecutor further submitted that grant of bail to the accused for the said offence is barred by express provisions of law. He further submitted that the applicant is a German national. If he is released on bail and in case he jumps the bail, it is difficult to secure his presence for the purpose of trial. Mr. Rivankar learned Public Prosecutor further submitted that the treatment for cancer is available at Goa, at the most the applicant can be taken to the hospital at Delhi with police protection but he may not be released on bail.

4. I have carefully considered the rival submissions, perused the record and the judgment relied upon by the learned counsel for the applicant.

5. During the course of arguments, learned counsel appearing for the applicant states that before examining the applicant by the expert doctor from Delhi, he is advised some tests. However it is difficult for the applicant to carry out such tests at Goa.

6. In the case of **Syed Abdul**, (*supra*), the applicant

was a Indian national, whereas in the present case, the applicant is a German National. Therefore, the case of the present applicant cannot be compared with the said applicant in a case cited supra.

7. In the circumstances, the argument of the learned Public Prosecutor appears to be correct because the applicant is a German National and if he jumps bail, it would be difficult for the prosecution to secure his presence. The offence committed by the applicant is serious in nature, therefore, the applicant is not entitled for bail or interim bail. At the most the applicant can apply to the trial Court for facility of escorting him to the hospital at Delhi.

8. With these observations, both the applications stand rejected.

K. L. WADANE,J.

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