

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Application (Bail) No.198 of 2015.

Ms. Filipa Santos Costa. .. **Applicant**

Versus

Union of India and another .. **Respondents**

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Ms. Maria Carolina Collasso with Mr. K. Paulekar
Advocate for the applicant.

Mr. Mahesh Amonkar, APP for the respondents.

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CORAM : K.L. WADANE, J.

Date of Reserving the order : 08/09/2015.

Date of Pronouncing the order :10/09/2015

ORDER:

1. Heard Ms. Maria Carolina Collasso, learned counsel appearing for the applicant and Mr. Mahesh Amonkar, Additional Public Prosecutor appearing for the respondents.

2. This is an application filed by the applicant under the provisions of 439 of the Code of Criminal Procedure.

3. The brief facts of the case, may be stated, as follows:-

The respondent no.1 filed a complaint alleging that on 28.11.2014 acting on the secret information, the Officer of the respondents along with two panchas went to Mapusa Bus Stand and there they accosted the another accused by name Eden Amzaleg, an Israeli National. The applicant was with Eden Amzaleg. I.O. found charas in the bag. I.O. found charas in the bag. Both were taken to a flat where the Charas was weighed, packed and sealed under the panchanama. There were two bags, "green" and "black" colour belonging to said accused - Eden Amzaleg. The Charas was packed, sealed and signed by panchas. After preparation of panchanama, a report under Section 57 of the N.D.P.S. Act 1985 was prepared on the very date and was immediately submitted to the Superintendent. After completing the investigation, the Investigating Officer filed a charge-sheet against the present applicant and others.

4. I have heard the arguments of Ms. Maria Carolina Collasso, learned counsel appearing for the applicant and Mr. Mahaesh Amonkar, the learned Additional Public Prosecutor appearing for the respondents.

5. During the course of arguments, Ms. Maria Carolina Collasso, learned counsel appearing for the applicant argued that there is non-compliance of the mandatory provisions under Section 50 of the N.D.P.S. Act. She further argued that the complainant is not authorised to lodge a complaint and the recovery of the alleged narcotic drugs was at S.T. Bus Stand at Mapusa. It is further argued that at the time of seizure or search, no Lady Officer was present at the spot nor their names are mentioned in any papers of the investigation. The sum and substance of the arguments of Ms. Maria Carolina Collasso, the learned counsel appearing for the applicants, was that there was non-compliance of the various mandatory provisions of the N.D.P.S. Act. Therefore, no case is made out against the applicant - accused nor there is sufficient material to believe that

the accused-applicant has committed any offence.

6. As against this, Mr. Mahesh Amonkar, the learned Additional Public Prosecutor appearing for the respondents, has argued that no personal search of the accused was taken. Therefore, the question of following mandatory provisions of Section 50 of the N.D.P.S. Act, does not arise. Further, he stated that two witnesses are already examined by the prosecution and the prosecution is ready to conduct the trial without any delay. So, looking to the stage of the case/trial, Mr. Amonkar has prayed that the application for bail be rejected. Further, he stated that the applicant is Israeli National (Portuguese) and if she is released on bail and she jumped the bail, then it is impossible to secure her presence.

7. During the course of arguments, Ms. Maria Carolina Collasso, learned counsel appearing for the applicants relied upon the observations in the case of (i) **Noor Aga Vs. State of Punjab and another (2008**

Drugs Cases (Narcotics) 3521, (ii) Toofan Singh Vs. State of Tamil Nadu [CD] 2013 SC 1915 and (iii) Kanhaiyalal Vs. Union of India [air 2008 SC 1044].

8. During the course of the arguments, Mr. Amonkar, the learned Public Prosecutor appearing for the respondents, has drawn my attention to the decision of this Court in Criminal Application (Bail) No.302 of 2014. On perusal of the same, it appears that the said bail application was filed by the present applicant and in that application, all the contentions now raised on behalf of the applicant were already raised citing same case laws and this Court, by its reasoned order dated 21.1.2015 has rejected the application.
9. I have gone through the order passed in the earlier bail application, from which, it is seen that the case laws now referred were also referred at the time of hearing of the earlier bail petition. This Court has considered all the legal aspects relating to the

mandatory provisions etc. and has rejected the said bail application. When a specific query was made to the learned Advocate appearing for the applicant as to what is the change in the circumstances to consider this second bail application, to which she submitted that at the time of decision of the first bail application, a copy of the complaint was not supplied to the applicant. However, it is submitted by Shri Amonkar, the learned Public Prosecutor that at the time of arrest, the copy of the panchanama was given to the applicant and also informed about the ground of her arrest. The learned counsel for the applicant argued that the complainant/officer has no authority to lodge the complaint, however, Mr. Amonkar, the learned Public Prosecutor for the respondents has produced on record a copy of the order authorising the present officer to file a complaint relating to the offence under N.D.P.S. Act. The quantity of the seized narcotic drug appears to be 1 Kilo and 480 grams, which is commercial quantity.

10. Therefore, in view of the provisions of Section 37

(i)(b) of the N.D.P.S Act, the applicant is not entitled for bail. Looking to the earlier order passed by this Court, it appears that all the contentions raised by the applicant were considered and decided and, therefore, I am of the opinion that such questions now cannot be revisited without any change in circumstances of the case.

11. Hence, the Criminal Application (Bail) No. 198 of 2015 stand rejected accordingly.

K.L.WADANE, J

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