

IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Application (Bail) No.199/2015

Mr. Datta Paratkar

... Applicant

Versus

State of Goa and another

... Respondents

...

Ms. Caroline Collasso, Advocate for applicant.

Mr. S.R. Rivonkar, Advocate for the respondents.

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Coram: K. L. WADANE, J.

Order reserved on 21.10.2015.

Order Pronounced on :30/10/2015.

P.C.

1] Heard Ms. Collasso, learned counsel, appearing for the applicant and Mr. Rivonkar, learned Public Prosecutor, appearing for the respondents.

2] Present application is filed by the applicant in connection with Crime No. 2/2015 of Anti Narcotic Cell Police Station, Panaji-Goa.

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

On 11.01.2015 the accused was arrested on the allegations that he was found in possession of 0.3 grams of LSD papers and

thereby committed an offence punishable under Section 22 (C) of the N.D.P.S. Act, 1985. It is further alleged that during the search panchanama, test was carried out by the Investigation Officer with the help of drug detection kit and the substance had given a positive result for presence of LSD. So, in presence of panch witnesses, the alleged narcotic drugs were seized and attached and after carrying an usual investigation, the Investigating Officer has submitted a charge-sheet.

4] I have heard the arguments of Ms. Collasso, learned counsel appearing for the applicant and Mr. Rivonkar, learned Public Prosecutor appearing for the respondents.

5] Ms. Collasso, learned counsel appearing for the applicant has argued that the alleged LSD of 20 square sheets were not properly/qualitative analyzed and the paper weight cannot be taken into consideration because paper is not a mixer. The next argument of the learned counsel is that the Investigating Officer has not followed the mandatory provisions of Sections 42 and 50 of the N.D.P.S. Act. Therefore, there is no bar to grant bail to the applicant. She further argued that when the charge-sheet came to be filed against the applicant, no report of the Chemical Analyzer was submitted along with the charge-sheet. Therefore, the charge-sheet submitted against the applicant/accused was, in fact, no charge-sheet in the eyes of law. In support of her submission, the learned counsel for the applicant, relied

upon the judgment reported at CDJ 1997 BHC 1147 in a case of Nicklaus Petr Heel ...Versus.. State of Goa.

6] As against this, Mr. Rivonkar, learned Public Prosecutor appearing for the respondents has argued that as per the provisions, the prosecution agency has submitted a charge-sheet before the Special Court within a period 180 days. The C.A. report was awaited. Therefore, it was submitted before the Special Court by way of supplementary charge-sheet. Mr. Rivonkar, learned Public Prosecutor has further argued that when the charge-sheet was submitted before the Court within a period of 180 days at that time, there was sufficient material against the accused to constitute the offence as the Investigating Officer has tested the substance by a Drug Detection Kit. Therefore, it cannot be said that when the charge-sheet was filed, there was no evidence against the accused to take cognizance. During the course of the arguments, Mr. Rivonkar, learned Public Prosecutor has produced on record a copy of the C.A. report.

7] I have perused the reasons recorded by the Trial Court from which it is seen that as per panchanama, the Investigation Officer has taken small pieces of suspected LSD papers and tested the same with the Drug Detection Kit and he found that the said pieces tested positive LSD. Then, he counted the pieces and found perforated sheet is having 20 square papers. The same were weighting 0.03 grams. As

per the Notification by which the quantity of the narcotic drug is classified as a small quantity and commercial quantity. So, as per the notification, the above 0.1 gram is a commercial quantity. Therefore, in view of the provisions of Section 37 (1)(b) of the N.D.P.S. Act, no person accused of an commercial quantity shall not be released on bail. It is well established that principle of law while dealing with the application for bail either for allowing or rejecting, the detailed examination of the evidence and elaborate documentation of the merit is deprecated.

8] I have gone through the facts of the authority cited by the learned counsel for the applicant in Nickalus Peter Heel (supra). The relevant observations of the above case are that after the evidence of the parties is over and when the Court was assessing evidence on record after the conviction. Here in the present case, it is not necessary to go through each and every details of the case and minor discrepancies as if this Court is dealing with the question of the criminal trial after evidence is over.

9] From the record it appears that there is sufficient material against the applicant to proceed with the trial and no case is made out by the applicant for grant of bail. Moreover, from the report, it is seen that one parcel containing 20 square shape pieces (approximate weight 0.3 grams) sent to the Central Forensic Science Laboratory, Hyderabad

and on its analysis LSD has been detected in the sample. So, from the record, it is apparently seen that the applicant/accused was found in possession of the commercial quantity of LSD. Therefore, I do not think that the accused is entitled for the bail. Hence, the application stands dismissed.

K.L. WADANE, J.

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