

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 201 OF 2015

MR. MONDAY FELIX ODEDE, PRESENTLY
LODGED AT SUBJAIL, SADA VASCO.

... Applicant

Versus

STATE, REPRESENTED BY OFFICER IN
CHARGE, ANTI NARCOTIC POLICE
STATION, PANAJI.

... Respondent

Ms. C. Colosso, Advocate for the applicant.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the
respondent.

Coram:- C. V. BHADANG, J.

Date:- 5th December, 2015

P.C.

Heard the learned Counsel for the applicant and Shri Amonkar,
the learned Additional Public Prosecutor for the respondent.

2. The applicant is seeking bail in respect of the offence punishable
under Section 21(c) of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (NDPS Act, for short), for having found in
possession of commercial quantity of L.S.D.

3. Indisputably, the trial has started and the prosecution has
examined as many as three witnesses, including PW1- S. N. Rasool,
the Chemical Analyst.

4. The learned Counsel for the applicant has placed reliance on the evidence of PW1, in order to submit that even assuming that there was any recovery of L.S.D. from the applicant, from the evidence of PW1, it cannot be said that he was in possession of commercial quantity of the said drug. It is submitted that the alleged recovery was in the form of 15 L.S.D. papers. It is submitted that the evidence of PW1 would show that while carrying out analysis, the L.S.D. papers were dipped in Methanol liquid. PW1 has further stated that the weight of the papers after the L.S.D. got dissolved in the Methanol was found to be 234.2 mg. Thus, the quantity of the L.S.D. as found by PW1 is only to the extent of 9.3 mg. It is submitted that the commercial quantity as notified for L.S.D. is 0.1gm and above. It is submitted that in such circumstances and having regard to the fact that the applicant cannot, at this stage, be said to have found in possession of commercial quantity, he be released on bail. The learned Counsel would submit that appropriate conditions may be imposed to ensure the attendance of the applicant at the trial.

5. Shri Amonkar, the learned Additional Public Prosecutor for the respondent, has strongly opposed the prayer. It is submitted that the trial is already underway. Merely on account of the evidence of PW1, the applicant cannot seek bail. It is submitted that the applicant is a Nigerian national and is facing prosecution in three other cases, including two under the NDPS Act. It is, thus, submitted that there is possibility of the applicant misusing the bail.

6. I have considered the rival circumstances and the submissions made.

7. Undoubtedly, the offences under the NDPS Act are of serious nature moreso, when the quantity in possession of the accused is a commercial quantity. The prayer for bail, in this case, is primarily based on the cross-examination of PW1, in which, he has stated that the L.S.D. papers were dipped in the Methanol solution and after this, the weight of the paper (without L.S.D.) was found to be 234.2 mg, thus, indicating that the quantity of L.S.D. was 9.3 mg, being difference in the weight before and after the L.S.D. papers were dipped in Methanol. I find that, at this stage, it would neither be appropriate nor necessary to record a final and binding opinion, so as to prejudice either of the parties, when the trial is still pending. However, the fact remains that even going by the evidence of PW1, at this stage, the quantity would be only marginally short of the commercial quantity. Further having regard to the fact that the applicant is not a local resident and that there are other similar offences said to be pending and the trial is part heard, I do not find that a case for exercise of discretion is made out.

8. In the result, the application stands rejected.

9. It is made clear that the observations herein are primarily for the

purpose of consideration of the prayer for bail and the learned Special Court shall not be influenced by any of the observations at the trial.

C. V. BHADANG, J.

SMA