

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 200 OF 2015

John Fernandes,
aged 52 years, Indian National,
H.No.654/3, Praiswado,
Anjuna, Bardez Goa.
Presently lodged Mapusa Judicial Lock Up,
Mapusa, Bardez Goa. ... Applicant

V e r s u s

1. State,
As represented by
Officer-in-charge,
Anti Narcotic Cell Police Station,
Panaji Goa.

2. The Public Prosecutor,
High Court Building,
Altinho, Panaji Goa.

... Respondents

Mr. Jose Peter D'Souza and Ms. C. Collasso, Advocates for the applicant.

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

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 12.10.2015

ORDER PRONOUNCED ON : 16.10.2015

O R D E R :

The present application is filed by the applicant/accused under Section 439 of the Criminal Procedure Code. The present applicant and one Mr. Dulal Das are facing trial before the NDPS Court, Mapusa, for the offence punishable under Sections 22(C), 20(b)(ii)(A)

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read with 29 of the NDPS Act, 1985 on the allegations that the applicant found in illegal possession of 0.3 grams of LSD papers and 27 grams charas during the raid at Anjuna, Bardez Goa. The applicant was arrested on 01.11.2014 and after completion of the investigation, the charge sheet has been filed.

2. The grounds raised by the applicant to grant him a bail are that he was not the owner nor he is in possession of the house where the police took search. Secondly, there was violation of Section 50 of the NDPS Act, 1985 as he was not informed, that he has a right for his personal search to be taken before a Gazetted Officer or Magistrate. The applicant has raised several other grounds such as no quantitative analysis has been undertaken by the Chemical Analyst and the room was not in his exclusive possession. Further more, the house in which the raid was conducted is not owned by him.

3. The application of the applicant is opposed by the respondents on the ground that 0.3 grams of LSD papers and 27 grams of charas found in the possession of the applicant/accused and it was sent to CFSL Hyderabad for chemical examination and the report of the same was received stating that Exhibits I, II and IV concerned in this case gave positive result of LSD and charas respectively.

4. It is further contended by the prosecution that the house No. 654/2, Praiswado, Anjuna, Bardez, is in the name of the father of the applicant/accused.

5. I have heard the arguments of Mr. Jose Peter D'Souza, learned counsel appearing for the applicant and Mr. M. Amonkar, learned Additional Public Prosecutor appearing for the respondents.

6. During the course of the arguments, the learned counsel appearing for the applicant has argued that the Investigating Officer has failed to comply with the mandatory provisions of Section 50 of the NDPS Act so also the premises where the raid was conducted is not in possession of the applicant nor it is recorded in the name of the applicant in the panchayat records. The learned counsel further pointed out that in para 7 of the order, the learned Special Judge has mentioned the house number as 333/A at Mandrem. Mr. M. Amonkar, learned Addl. Public Prosecutor during the course of his arguments has explained that this is a mistake that may be due to the copy-cut-paste system followed by the Judicial Officer.

7. The learned counsel appearing for the applicant has relied upon the observations in the case of **E. Micheal Raj Vs Intelligence Officer, Narcotic Control Bureau** reported in **2008 Drugs Cases (Narcotics) 243**.

8. I have carefully gone through the contents of the complaint dated 01.11.2014 from which it is seen that the complainant Shitakant Nayak, PSI of Anti Narcotic Cell Police Station, Panaji, along with panchas and police knocked the main door of the house. Upon knocking the main door, one male person opened the door of the house at that time it was 20.10 hours. The complainant introduced himself to the said person as the PSI and upon asking his name the said person disclosed his name as John Fernandes i.e. the present applicant. Further from the contents of the complaint, it is seen that the Investigating Officer has explained the purpose of his visit and also informed to the applicant that he desires to search the house/house premises and his personal search can be conducted in the presence of the Gazetted officer or Magistrate. However, the applicant declined and offered a free ingress to search the house. Prima facie, it appears that this is in compliance of the provisions of Section 50 of the NDPS Act. Further, it is seen that a small steel cupboard which was on the left hand side of the bed room was found locked. Therefore, the complainant requested the applicant to hand over the key of the said cupboard on which the applicant removed one key from the right hand side pant pocket and handed over to the complainant. Then, the complainant opened the said cupboard and saw that the cupboard was having three compartments and during the search, the complainant found one sheet of 25 square shape pieces having multi colour with design print and one sheet having 5 square shape pieces having multi colour with design print.

The said papers were suspected to be LSD papers. Then, the complainant weighed both perforated sheets and found totally weighing 0.3 grams. Further, 27 grams of charas was found in possession of the applicant. So looking to the allegations levelled against the applicant, it appears that there is sufficient evidence against the applicant to proceed with the trial. Prima facie, it appears that the applicant was in concise possession of the narcotic drugs. Further more, it has been stated that the charge has been framed and the trial has begun and one witness namely the Chemical Analysis has been examined. In such circumstances, I do not think that the applicant is entitled for bail.

9. The above cited authority relied upon by the learned counsel appearing for the applicant is relating to the observations of the Apex Court in appeal against the order of conviction after concluding of the trial. In the present case, this Court is dealing with the aspect of bail. Therefore, the observations of the above cited authority are inapplicable to the facts of the present case. Considering the fact that the trial of the applicant has started and it would be concluded within a reasonable period of time, as such the applicant is not entitled for bail. Hence, the application for bail stands rejected.

K. L. WADANE, J

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