

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 302 of 2014**

Ms. Filipa Santos Costa,
Major, Portuguese National,
Presently in Judicial Custody,
Sub-Jail Sada, Vasco, Goa.

... Applicant.

Versus

1. Union of India,
As represented by Officer in Charge,
Narcotics Control Bureau,
Home in the Woods,
Porvorim, Goa.

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

... Respondents.

Ms. Caroline Collasso, Advocate for the applicant.

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

Coram :- U. V. BAKRE, J.

Reserved on : - 16th January, 2015.

Pronounced on :- 21st January, 2015.

ORDER:-

Heard Ms. Collasso, learned Counsel for the applicant
and Mr. Amonkar, learned Additional Public Prosecutor for the

respondents.

2. The applicant, who has been arrested on 28/11/2014 in Crime No. NCB/GSZ/CR-O2/14 registered by Narcotics Control Bureau (NCB) for offences under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act), has filed the present application for bail.

3. It is alleged by the applicant that she is Portuguese national and had come to Goa on holiday and to study architecture, she being architect by profession. She stated that on the evening on 28.11.2014, she along with Eden Amzaleg, an Israeli national, were to proceed to Bangalore to visit Auroville Ashram and offer her expertise as an architect to the said Ashram. They were waiting at the Mapusa bus stand for the bus, when 7 to 8 persons swooped on Eden Amzaleg and put handcuffs on his left hand. Amzaleg was assaulted by them and he received bleeding injuries. Even the applicant was assaulted and their bags were searched, but nothing incriminating was found. The applicant has stated that some writing was taken from them forcibly and they were

made to sign. The signatures on all documents and statements were taken under threats. The applicant says that she retracts all the statements of the confessional nature. The applicant is innocent and no narcotics drugs were found in her possession. she, therefore, prays that she be released on bail.

4. By way of reply, the Investigating Officer has stated as under:- A specific information was received by the office of N.C.B. on 28/11/2014 at about 17.30 hours stating that a person by name Eden Amzaleg, an Israeli National, aged about 26 years is about to board a bus for Bangalore from Mapusa Bus Stand by about 19.45 hours and that he is carrying with him a substantial quantity of charas/hashish in his hand bag, which information was reduced into writing and intimated to the Senior Officer. The team of NCB officers headed by Shri Jeetendra Ranjan, Superintendent of NCB proceeded at 18.40 hours in departmental vehicle with Field Testing Kit and official seal, etc. and reached the Mapusa Bus stand from where the buses depart to Bangalore. According to NCB, at the spot, 2 persons namely Santosh Ashok Samant and James Joseph Matos Sequeira were taken as panch witnesses. According to the Investigating Officer, the informer was

present at the spot and at about 19.25 hours, the said informer pointed out to the said person namely Eden Amzaleg to the officers of NCB at the said bus stand and a watch was kept over him and when he reached near Paulo bus ticket counter at about 19.30 hours, the team encircled him. It is further alleged in the reply that Shri Haresh Gangan, Intelligence Officer of NCB showed to said Eden Amzaleg his identity card and also gave introduction of independent panch witnesses to him and on asking, the said person disclosed his name as Eden Amzaleg. According to the prosecution, the NCB Officers also noticed that a girl aged about 27 years was standing near Eden Amzaleg and when enquired with Eden, he informed that she was his friend and was accompanying him to Bangalore. Immediately, thereafter, Shri Jeetendra Ranjan called Kartik Kashyap, S. P. of A.N.C., Goa and requested to depute one lady officer at the spot. It is alleged that at that time, suddenly, said Eden Amzaleg started running away from the spot and was chased by NCB officers and after running for about 500 metres, said Eden Amzaleg lost his balance and fell on the road and got himself injured and thereafter, he was apprehended. Few minutes thereafter, five police personnel, including one lady police officer, all from Police Control Room,

reached at the spot. The said lady police officer enquired with the lady accompanying Eden Amzaleg about her name and address and she disclosed her name as Ms. Filipa Santos Costa (applicant). At the said bus stand, search was carried out of the bags of Eden Amzaleg and of the applicant and brown coloured drugs were found in yellow coloured polythene bag which was kept in green coloured hand bag belonging to Eden Amzaleg. The said drugs were tested with the help of Field Testing Kit and test was positive for charas/hashish which is narcotic drug. On enquiry made with Eden and Filipa about the drug, they confirmed that the same was charas/hashish and that they had purchased the same from one Nigerian by name Jay at Arambol. The applicant and Eden Amzaleg were then taken to NCB office at Porvorim, Goa where the drugs were weighed in the presence of panchas and found to be weighing 1480 i.e. 1 Kilo 480 Grams. Two samples of 24 grams each were put in small polythene bags and were heat sealed and thereafter again put into separate envelopes and were sealed whereas remaining quantity of charas was put in a bigger polythene bag which was also heat sealed and put in small carton box which was wrapped with cello tapes. Various other articles were found in bags belonging to Eden as well as

of the applicant and they were also separately put in green coloured envelopes and sealed. The panchanama began at 21:45 hours and completed at 22:30 hours on 28.11.2014. Statements of the applicant as well as of Eden Amzaleg were recorded under Section 67 of the N.D.P.S. Act and they admitted that they were jointly in possession of the said drugs and were addicted to the said drugs and the same were procured by them for their personal consumption. It was admitted by them that Eden Amzaleg, being D.J., had gone to Portugal where he met the applicant and both became friends and thereafter planned to visit to Goa. The copies of panchanama and arrest memos were served on both and thereafter, both were arrested on 28.11.2014 at about 11:30 p.m. and 11:40 p.m. respectively. On 29.11.2014, both the applicant and Eden Amzaleg were produced before the J.M.F.C., Mapusa, Goa for the purpose of 14 days judicial custody remand and the learned J.M.F.C. granted 10 days judicial custody remand, with a direction to produce them on 09.12.2014 at 2:30 p.m. Since the quantity was commercial, the applicant and said Eden were produced before the Special Judge, N.D.P.S. Court at Mapusa on 09.12.2014 for the purpose of judicial custody remand and the same was granted.

Again on 18.12.2014 further judicial custody remand was granted.

5. Ms. Collasso, learned Counsel appearing on behalf of the applicant submitted that admittedly no drugs were found on the person of the applicant. She pointed out that the information received by the NCB was not regarding the applicant but regarding Eden Amzaleg. She submitted that merely because the applicant was found near said Eden Amzaleg, she was arrested. She submitted that the alleged confessional statement of the applicant was recorded after she was arrested and therefore, the same cannot be voluntary and cannot have any value. She pointed out that the learned J.M.F.C. had granted judicial custody remand for 8 days with a specific direction to produce the applicant before him on 09.12.2014. She submitted that in violation of the said order of J.M.F.C., NCB produced the applicant before the Special Judge, N.D.P.S. Court on 09.12.2014 and took judicial custody remand up to 17.12.2014. She pointed out that on 17.12.2014, the applicant filed the present application for bail. She, therefore, urged that there was violation of mandatory provisions of Section 36A of N.D.P.S. Act. Learned Counsel

urged that the statement under Section 67 of the NDPS, Act is not admissible. She pointed out that even otherwise, the applicant had filed an application retracting the confession before the Investigating Officer on 30/11/2014 and, therefore, there was absolutely no value to the said confession. She submitted that the applicant has no criminal antecedents. Learned Counsel, therefore, urged that the applicant be released on bail. She relied upon the following judgments :

(i) **“Uday Mohanlal Acharya v/s. State of Maharashtra”**, [2001 SCC (Cri) 760];

(ii) **“Mr. Noel D'Souza v/s. State and another”**, [2005 Drugs Cases (Narcotics) 604];

(iii) **“Nazir Ahmed v/s. King-Emperor”**
(CDJ 1936 PC 042)

(iv) **“Lamin Bojang v/s. The State of Maharashtra”**
(CDJ 1996 BHC 207)

(iv) **“Sanjay Kumar Kedia @ Sanjay Kedia V/s. Intelligence Officer, Narcotic Control Bureau and another”**, [2010 (1) Drugs Cases (Narcotics) 88];

(v) **“Natabar Parida Bisnu Charan Parida Batakrushnaparida Babaji v/s. State of Orissa”**, [CDJ 1975 SC 228] : [1975(2) SCC 220];

(vi) **“Suryakant Ramdas More and Others v/s. State of Maharashtra”**, [CDJ 1989 BHC 207] : [1989 (2) BCR 653];

(vii) **“Noor Aga v/s. State of Punjab and another”**, [2008 Drugs Cases (Narcotics) 352];

(viii) **“Toofan Singh v/s. State of Tamil Nadu”**, [CDJ 2013 SC 1915] : 2013 AIR (SCW) 5740 and

(ix) **“U.O.I. v/s. Bal Mukund and others”**,

[2009(1) Drugs Cases (Narcotics) 241];

(x) Order dated 18/07/1998 passed by the High Court of Bombay at Goa at Panaji in Criminal Miscellaneous Application no. 88/1998 (Joaquim M. Corea Vs. State of Goa).

6. On the other hand, Mr. Amonkar, learned Additional Public Prosecutor submitted that the panchanama was conducted on 18.11.2014 and after completion of the panchanama at about 22.30 hours, the Investigating Officer recorded the statement of the applicant under Section 67 of the N.D.P.S. Act and thereafter, at about 23.40 hours, the applicant was put under arrest. He, therefore, urged that the confessional statement of the applicant was not recorded after her arrest. He submitted that this fact has been duly stated in the reply and that the Investigating Officer would file his affidavit in this regard. (The said affidavit has been subsequently filed). Learned Additional Public Prosecutor submits that merely because the said confession has been retracted, it cannot be said that the statement under Section 67 of the N.D.P.S. Act cannot at all be looked into. He urged that the evidentiary value of the statement under Section 67 of the N.D.P.S. Act and of the statement of retraction of confession would be considered after the trial is completed.

He pointed out that the authorities cited by the Counsel for the applicant on retracted confessions are all pertaining to the cases in which trial had already been concluded. He pointed out that there is no dispute that commercial quantity of Charas being 1 Kilo 480 grams was found and as per the statement under Section 67 given by the applicant as well as by Eden, both had procured the same from one Nigerian citizen. Learned Additional Public Prosecutor submitted that said Nigerian citizen has to be traced and arrested. Learned Additional Public Prosecutor further submitted that the applicant had approached the N.D.P.S. Court for bail but had withdrawn the said application. According to him, the applicant should first apply to N.D.P.S. Court, on account of hierarchy of the Courts, and if she does not succeed there, she should approach this Court. Insofar as taking second remand from the N.D.P.S. Court, though the J.M.F.C. had directed the applicant to be produced before him, is concerned, Mr. Amonkar submitted that this is merely a technical irregularity since the offence was otherwise exclusively triable by N.D.P.S. Court. Mr. Amonkar submitted that judgment in "**Toofan Singh**" (supra) cannot be looked into since the same has been referred to a Larger Bench. He relied upon the judgment of

the Supreme Court in the case of “**Kanhaiyalal v/s. Union of India**”, [AIR 2008 SC 1044] and submitted that the statement under Section 67 of N.D.P.S. Act is admissible. He also relied upon the judgment dated 19.03.2012 of this Court in Criminal Application (Bail) No. 71/2011 with other Miscellaneous Applications (**Mr. Felix Ohimain Evborokhai v/s. State of Goa and Another**). He, therefore, urged that the Bail Application be rejected since the investigation is at a preliminary stage and the same would be hampered in case the applicant is released on bail.

7. I have perused the case papers and considered the arguments advanced by the learned Counsel for the parties as also the judgments relied upon by them.

8. Section 36A of NDPS, Act provides as under:

“36A. Offences triable by Special Courts.- (l)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there

are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

- (b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under subsection (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:*

Provided that in cases which are triable by the Special Court where such Magistrate considers-

- (i) when such person is forwarded to him as aforesaid; or*
- (ii) upon or at any time before the expiry of the period of detention authorised by him; that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;*
- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under*

section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27 A or for offences involving commercial quantity the references in sub-section (2) of

section 167 of the Code of Criminal Procedure, 1973, thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days:

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily."

9. The applicant was produced before the J.M.F.C., Mapusa, on 29.11.2014 and was remanded to Judicial Custody Sada, for 10 days with direction to produce her on 09.12.2014. On 09.12.2014, however, the applicant was produced before the Special Judge, NDPS, Court at Mapusa who remanded the applicant to Judicial Custody for further nine days, with a direction to produce before him on 18.12.2014. The applicant, on 09.12.2004, was not produced before the J.M.F.C., Mapusa.

Merely because there was no order of the J.M.F.C., Mapusa, directing that there was no necessity of further detention and to forward the applicant to the Special Court, it cannot be said that there is violation of some mandatory provision, thereby entitling the applicant to bail. In the case of **“Uday Mohanlal Acharya”** (supra), the question was regarding indefeasible right accruing to the accused to be released on bail on the expiry of the period to file charge sheet as contemplated under the proviso to sub-section (2) of Section 167 of CR.P.C.. In the case of **“Natabar Parida Bisnu Charan Parida”** (supra), also the question for consideration was whether the appellants were entitled to be released on bail under the proviso (a) of Section 167(2) of Cr.P.C. It has been held that the Court will have no inherent power of remand of an accused to any custody unless the power is conferred by law. In the case of **“Suryakant Ramdas More & others”** (supra), the learned Metropolitan Magistrate had gone beyond his powers in authorising detention for a period exceeding 15 days and not considering the application for bail. In the case of **“Mr. Noel D'Souza”**(supra), charge sheet was filed before the Special Judge, NDPS Court at Mapusa, by the Karnataka police and the question was whether a Police Officer in charge of Police

Station in Karnataka could file a charge sheet in the State of Goa. Since in the above circumstances, it was prima facie found that the detention by the Special Judge, Mapusa, was unlawful, the accused was admitted to bail, provisionally. In the case of ***“Joaquim M. Correia”*** (supra), the Special Court was constituted by Notification dated 27.03.1992 with Shri A. D. Salkar as its Presiding officer. Thereafter, Shri Salkar was transferred in the first week of June, 1998 and after the said transfer no Special Judge of the said Special Court at Mapusa was appointed. Only on or about 09.07.1998, Shri Kenkre was appointed as the Special Judge. The contention which was raised was that on 12.06.1998 when the accused were remanded by Shri Kenkre, as Special Judge of Narcotic Drugs and Psychotropic Substances Court, Mapusa, he had no jurisdiction to remand the accused since as on that date the charge of the Special Court, Mapusa, had continued to be with Shri Salkar who till then had not been denotified. Therefore, it was held that Shri Kenkre had no authority to exercise power of remand in relation to the said accused and the proper course for Shri Kenkre was to have referred the case to Shri Salkar, whose appointment as a Special Judge was in force on 12.06.1998 and it was Shri Salkar who alone could have

granted remand of the accused on 12.06.1998 and could have taken cognizance of the offences alleged against the accused. Therefore, it was held that the detention of the accused from 12.06.1998 onwards was unauthorized firstly because no cognizance of the offence alleged against the said accused was taken on the basis of the charge sheet which was filed on 12.06.1998 and the period of 90 days had expired on 26.06.1998 and secondly Shri Kenkre had no authority to remand the accused. This Court, therefore, proceeded to grant bail to the said accused. In the case of ***“Sanjay Kumar Kedia @ Sanjay Kedia”*** (supra), the Special Judge had remanded the accused to judicial custody from time to time and the total custody was brought to one year and two days. The accused moved bail application on the ground that the investigation had not been completed within the stipulated period of time fixed by the Special Judge. The bail application was rejected by the trial Court and also by the High Court. The Apex Court found that the first application for extension of period for completion of investigation been filed by the Investigating Officer without indicating the progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. It was also found that no notices

were issued to the accused before granting applications for the extension of the custody. The Hon'ble Supreme Court held that the extensions granted under the proviso to Section 36A (4) did not satisfy the conditions laid down therein. The accused was therefore ordered to be released on bail. In the cases of **“Nazir Ahmed”** and **“Lamin Bojang”** (supra), it has been held that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. All the above cases are not applicable to the facts and circumstances of the present case. The quantity of narcotic drug, in the present case, is commercial. It is not the case that the Magistrate had remanded the applicant for a period exceeding 15 days. The learned Special Judge, NPPS Court, at Mapusa is the only Court having jurisdiction. Breach of the provision of Section 36A(1)(b), even otherwise, is mere irregularity, like a simple breach of procedure under Section 167(2) of Cr.P.C. and such breach does not entitle the accused to the grant of bail.

10. In paragraph 2 of the application, the applicant herself has stated that on 28.11.2014, when She was apprehended, She was in the company of Eden Amzaleg. The evidence on

record, prima facie establishes that in the hand bag of Eden Amzaleg, the polythene bag containing the commercial quantity of Charas/Hashish, was found. There is panchanama of raid and attachment of the contraband. What is more important is that there are statements of the applicant as well as of Eden Amzaleg, written by themselves, recorded by the Investigating Officer under Section 67 of the NDPS, Act, which reveal that they had purchased the said Charas/Hashish from one Nigerian namely Jay at Arambol. That the said drug was purchased from a Nigerian by name Jay from Arambol, cannot be known to the Investigating Officer unless actually told by the applicant and Eden.

11. The panchanama of raid and attachment started at 21.45 hours on 28.11.2014 and concluded at 22.30 hours. The applicant was placed under arrest on 28.11.2014 at 23.40 hours. It is the contention of the applicant that her statement under Section 67 of the NDPS Act was recorded after she was arrested and hence the same is not admissible. In the case of ***“Bal Mukund and others”*** (supra), the Apex Court has observed that if the accused persons were interrogated while they were in custody, it cannot be said that they had made a

voluntary statement which satisfies the condition precedent laid down under Section 67 of the NDPS, Act. In the present case, a perusal of the statement of the applicant as well as of Eden Amzaleg reveal that though they were recorded on 28.11.2014, however, the time of recording the same has not been mentioned in the said statements. However, in the reply it is stated by the Investigating Officer that the statement of Eden Amzaleg and of the applicant were recorded under Section 67 of the NDPS, Act, voluntarily, without any fear, pressure or threat and they admitted that they were jointly in possession of the said drug and were addicted to drugs and the said drug was procured for personal consumption. It is stated in the reply that thereafter they were placed under arrest. The Investigating Officer has filed his affidavit stating that after completion of the panchanama at about 22.30 hours on 28.11.2014, he recorded voluntary statement of the applicant under Section 67 of the NDPS, Act which was written by the applicant herself. He has stated that after recording the statement, the applicant was put under arrest at 23.40 hours, on 28.11.2014. Hence, at this stage it cannot be said that the statement under Section 67 of the NDPS, Act was recorded after the arrest and is not voluntary.

12. Section 67 of NDPS Act, provides as under:

***“67. Power to call for information, etc.** - Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act-*

- (a) Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;*
- (b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;*
- (c) examine any person acquainted with the facts and circumstances of the case.”*

13. In the case of **“Noor Aga”** (supra), which case was under the Customs Act, inter alia, it has been held that Section 53 of the NDPS Act empowers the customs officers with the powers of the Station House Officers and an officer invested with the power of a police officer by reason of a special statute in terms of sub-section (2) of Section 53 would, thus, be deemed to be police officer and for the said purposes Section 25 of the Evidence Act shall be applicable. It is observed that Section 53A of the NDPS Act makes such as statement relevant for the purposes of the NDPS Act. It has

been held in the case *supra* that the confessional statement of an accused cannot be made use of in any manner under Section 138-B of the Customs Act and that even otherwise, such an evidence is considered to be of a weak nature. In the case of ***“Tofan Singh Vs. State of Tamil Nadu”*** (*supra*), the issue whether the officer investigating the matter under NDPS Act would qualify as Police Officer or not has been referred to a Larger bench for reconsideration of the issue.

14. In the case of ***“Kanhaiyalal”*** (*supra*), the Hon'ble Division Bench of Supreme Court has held thus:

“An officer vested with the powers of an Officer-in-Charge of a Police Station under Section 53 of the above Act is not a “Police Officer” within the meaning of Section 25 of the Evidence Act. Thus, it is clear that a statement made under Section 67 of the N.D.P.S. Act is not the same as a statement made under Section 161 of the Code, unless made under threat or coercion. It is this vital difference, which allows a statement made under Section 67 of the N.D.P.S. Act to be used as a confession against the person making it and excludes it from the operation of Sections 24 to 27 of the Evidence Act. In the instant case there is nothing on record to suggest that the appellant was compelled under threat to make the statement after he had been placed under arrest which renders such statement inadmissible and not capable of being relied upon in order to convict him. On the other hand, there is the evidence of

prosecution officer upon which the High Court has relied in convicting the appellant. No question in cross-examination had been put to the said prosecution witness in this regard and the version of the said witness must be accepted as corroborative of the statement made by the accused.

Though an application was made for retracting the confession made by the appellant, neither was any order passed on the said application nor was the same proved during the trial so as to water down the evidentiary value of the said statement. On the other hand, in the absence of such evidence on record, the High Court had no option but to proceed on the basis of the confession as made by the appellant under Section 67 of the NDPS Act. Since an officer for the purposes of Section 67 of the NDPS Act read with Section 42 thereof, is not a police officer, the bar under Sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made under Section 67 of the N.D.P.S. Act, the conviction of the accused on that basis was proper.”

15. In the case of **“Kanhaiyalal”** (supra), the Hon'ble Supreme Court has reiterated its earlier decision in the case of **“Raj Kumar Vs. Union of India”** [(1990) 2 SCC 409] and has held that an officer vested with the power of the officer-in-charge of a police station under Section 53 of the N.D.P.S. Act is not a “Police Officer”

within the meaning of Section 25 of the Evidence Act and, therefore, it is clear that a statement under Section 67 of the N.D.P.S. Act is not the same as statement made under Section 161 of Cr.P.C., unless made under threat or coercion. The judgment of the Division Bench of the Hon'ble Supreme Court in the case of **"Noor Aga"** (supra), was delivered on 09/07/2008, whereas judgment of the Division Bench of the Hon'ble Supreme Court in the case of **"Kanhaiyalal"** (supra), was delivered prior to that on 09/01/2008. In the case of **"Noor Aga"** (supra), however, the judgments in the case of **"Kanhaiyalal"** (supra) and **"Raj Kumar"** (supra) have been considered. Admittedly, the Judgments in **"Kanhaiyalal's case"** and **"Rajkumar's case"** (supra) have not been set aside. It is true that the applicant has retracted the said statement as a whole by an application filed on 30/11/2014, before the Investigating Officer. However, the effect of confessional statement vis-a-vis the statement of retraction will have to be considered on merits and not at the stage of bail. In the case of **"Kanhaiyalal"** (supra), the Hon'ble Apex Court has observed that it may also be recalled that though an application was made for retracting the confession made by the appellant, neither was any order passed on the said application nor was the same proved during the trial so as to water down the evidentiary value of the said statement. Same is the position in the present case. In the present case, besides the confessional statement of the applicant, there is other evidence

since the applicant and the other accused namely Eden Amzaleg were caught together.

16. There is therefore prima facie evidence against the applicant. The statement under Section 67 of the NDPS, Act also reveals that the applicant is addict of drugs. The quantity of charas being commercial, the offence is of serious nature. Section 37(ii) of the NDPS, Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the Public Prosecutor opposes the application for bail in respect of a person accused of an offence punishable for a term of imprisonment of five years or more, under this Act, shall be released on bail if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The investigation is stated to be at a preliminary stage. No case is made out for bail at this stage.

17. Hence, the application is rejected.

U. V. BAKRE, J.

SMA