

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 71 OF 2016

Mr. Uday Vaigankar,
son of Babuso Vaigankar,
Aged 38 years, Indian
National, R/O H.No.295,
Khalchawado, Arambol-
Pernem, Goa presently
lodged at Colvale Judicial
Lock up, Mapusa, Goa ... Applicant

Versus

1. State of Goa
(As represented by
Officer-in-charge
Anti Narcotic Cell
Police Station,
Panaji, Goa)
2. The Public Prosecutor,
Panaji-Goa ... Respondents

Mr. Kamlakant Poulekar, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

CORAM :- C. V. BHADANG, J.

Reserved on : 29th April, 2016.

Pronounced on : 3rd May, 2016.

ORDER :

This is an application for bail. The applicant is a co-accused along with one Imran Khan against whom FIR No.25/2015 is registered with Anti Narcotic Cell

(ANC), Panaji, Goa for the offences punishable under Sections 22(C), 22(b), 27(A) read with Section 29 of the N.D.P.S. Act.

2. The prosecution case is that in a raid conducted on 08/12/2015 between 20.00 to 23.30 hours at Kama Book Shop next to Ludu Guest House, near Sweet Lake, Arambol Beach, Arambol, Pernem, Goa, the co-accused Imran Khan son of Lalu Khan was found in illegal possession of 15 LSD papers, weighing 0.2 Grams and 1.16 Grams of MDMA. Investigation is stated to be in progress. In so far as the applicant is concerned, the allegation is that he had harboured the accused Imran Khan. The co-accused Imran Khan had disclosed that the drugs were given to him for sale by the present applicant. Admittedly, there is no recovery of any contraband from the applicant.

3. According to the applicant, he is an activist working against drugs menace in the society. He claims that there is nexus between some police officers and drug peddlers, which he tries to unearth, because of which some police officers are in cross terms with him as a result of which, he has been falsely implicated. It is contended that on 08/12/2015, one Mr. Ashan Khan

had contacted the applicant on his mobile and had informed that his nephew (Ashan Khan's nephew) by name Imran Khan has been detained at the cliff side shop by some police officials. The applicant along with two reporters had gone to the shop where the shutter of the shop was closed and on enquiry, the applicant was informed that the proceedings of the raid are being conducted inside the shop. After some time, the ANC officials came out and took the applicant and Imran Khan along with them. It is also contended that the applicant was slapped by a P.S.I., who was the member of the raiding party. It is contended that Imran Khan was staying with one landlord Ludu Naik at Khalchawada, Arambol, Pernem, Goa. The applicant has obtained the information under the Right to Information Act in respect of a tenant verification form (annexure E) submitted to the police by the landlord Ludu Naik. It is, thus, contended that the applicant has no concern and does not know Imran Khan. It is also contended that the applicant is neither the owner nor in possession of the shop, where the raid was conducted and he has no link with Imran Khan. It is contended that the applicant has given one room on Leave and Licence basis

to Ashan Khan. The Leave and Licence Agreement is produced at annexure D. It is submitted that earlier two applications filed for bail before the Special Court have been rejected and one application was withdrawn. It is contended that the information obtained under Right to Information Act is a subsequent development, which would entitle the applicant to bail.

4. I have heard the learned Counsel for the applicant and the learned Public Prosecutor for the State.

5. The learned Public Prosecutor has produced an examination report from the Central Forensic Laboratory, Hyderabad where the contraband allegedly recovered in this case was sent for analysis. The report is dated 31/03/2016 which is taken on record and marked 'X' for identification. The report shows that in Exhibit 1 the presence of the LSD was not detected. However, 4-Metthoxy-Benzyl - Phenethylamine has been detected. In so far as Exhibit I-B is concerned, MDMA was not detected. However, Methamphetamine has been detected which falls under entry no.159 in the schedule which prescribes 2 gms as the small quantity and 50 gms or in excess thereof as the commercial quantity. Thus the say

of the Investigating Officer based on the examination report states that the accused Ibrahim Khan and the present applicant would be charged under Section 20(a) of the Act. The learned Public Prosecutor submits that considering that the contraband as per the examination report would be of small quantity, the offence would be bailable.

6. I find that prima facie there is no recovery as such from the applicant. He has been basically charged under Section 27-A, which provides for punishment for financing illicit traffic and harbouring offenders. I have considered the circumstances and submissions made. Prima facie, at this stage there is no material to show that the shop was let out by the applicant so as to come within the ambit of Section 2(viii)(v) of the N.D.P.S. Act. The learned Public Prosecutor also does not dispute that considering the contraband now detected would be of small quantity. Considering these circumstances, I find that the applicant can be released on bail on appropriate conditions.

7. Hence, the following order is passed :

(i) The applicant shall be released on bail on

executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

(ii) The applicant shall co-operate with the Investigating Agency as and when required and shall not tamper with the prosecution evidence or witnesses.

(iii) The applicant shall not leave the State of Goa without obtaining permission from the Special Court at Mapusa.

(iv) Bail to be furnished before the Special Court.

C. V. BHADANG, J.

SMA