

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.118 OF 2016**

MR. RAMBAHADUR THAPPA
@ DEEPAL SONARI,
PRESENTLY LODGED IN
JUDICIAL CUSTODY
CENTRAL JAIL, COLVALE.

... Applicant

Versus
STATE AS REP.
BY OFFICER IN CHARGE
ANTI NARCOTIC CELL AND ANR.

... Respondents

Shri K. Poulekar, Advocate for the Applicant.
Shri M. Amonkar, Additional Public Prosecutor
for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 30th June, 2016

P.C. :

Heard learned Counsel for the parties.

2. This is an application seeking bail. The prosecution case is that in the night intervening between 13/11/2015 and 14/11/2015 at one O'clock the present applicant/accused was found in the company of the co-accused Neil D'Souza. The case is that on personal search of co-accused Neil D'Souza 1.050 kgs of charas was recovered. Accordingly, the applicant along

with co-accused Neil D'Souza, have been charge sheeted for the offence punishable under Section 20(b)(ii)(C) read with Section 29 of the NDPS Act, 1985. According to the prosecution, a prior information was received at 23.30 hours on 13/11/2015 that two male persons having the following description will be coming to deliver the contraband to their prospective customer at opposite to Chapel, Near Hotel Paahunaaz, Arpora-Baga Bridge Road, Arpora, Bardez-Goa.

The description was given as under:

- 1) Male person having Nepali Features, aged about 30-40 years, strong built, short height, fair complexion, wearing black colour T-shirt and Blue Jeans.
- 2) Male person aged about 40-45 hrs. thin built, tall height, having beard and moustaches, whitish complexion wearing blue colour shirt and black jeans.

PSI Satish V. Padwalkar had reduced the said information in writing and it was sent to the Superior Officer, in compliance with the provisions of Section 42 of the said Act and it

is thereafter that the raid was conducted in which the contraband is allegedly recovered. On investigation, the applicant and the co-accused are charge sheeted and are facing trial before the learned Special Judge.

3. The learned Special Judge has rejected the application for bail inter alia holding that the quantity of the contraband recovered is commercial quantity and the requirements of Section 37 of the said Act for enlarging the applicant on bail are not satisfied. The learned Judge has also considered the fact that prior information tallied with the description of the accused.

4. The learned Counsel for the applicant submits that there is no recovery of contraband from the present applicant. As such it is submitted that the applicant has been charge sheeted only with the aid of Section 29 of the NDPS Act namely for hatching a criminal

conspiracy and/or abetting the offence. The learned Counsel states that there is no material brought out by the prosecution which would indicate any such conspiracy between the applicant and the co-accused. The learned Counsel further states that according to the applicant he was picked up by the police at about 11.30 hours on 13/11/2015 and he was not accompanying the co-accused. The learned Counsel however does not dispute that the applicant is a native from Nepal.

5. The learned Counsel for the applicant placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ismailkhan Aiyubkhan Pathan V/s. Stte of Gujarat*** reported in ***2002 Drugs Cases 56*** and the decision of the Delhi High Court in the case of ***Dilbagh Singh V/s. D.R.I.*** reported in ***2009 (1) Drugs Cases (Narcotics) 224*** in order to show that there is no material to show conscious possession or conspiracy which can be attributed to the applicant.

6. The learned Additional Public Prosecutor, on the contrary, submits that there is enough material to show the existence of conspiracy. The learned Counsel submitted that applicant was found in company of the co-accused on whose personal search the commercial quantity of charas was recovered. The learned Counsel submitted that the prior information received about the description of the accused, tallied with their description carried at the time of the raid. It is submitted that this being the case of a commercial quantity the provisions of Section 37 of the NDPS Act are attracted and the learned Sessions Judge has rightly rejected the application.

7. I have carefully considered the rival circumstances and the submissions made. Undoubtedly, it is not the prosecution case that the applicant was personally found in possession of the contraband charas. The case basically

rests on Section 29 alleging a conspiracy and/or abetement by the applicant. It is however necessary to mention that, direct evidence of conspiracy is seldom available and cannot be insisted upon. The question, whether there is conspiracy or not is, largely a matter of inference, based on the material and the evidence produced by the prosecution at the trial. For the present purpose, it prima facie appears that there was a prior information received by the police officer, giving the description of the persons who were supposed to bring the contraband for its delivery to the prospective customers and in a raid which was carried out in pursuance of such information, the application was found in company of the co-accused. The contraband charas is said to be recovered, from the co-accused. Apart from this, there is an additional factor that the applicant is a native from Nepal. While enlarging the applicant on bail, one of the considerations, is whether the accused would be

available for trial and his personal presence can be enforced.

8. I have carefully gone through the order passed by the learned Special Judge and I do not find that any case for grant of bail is made out. The case of ***Ismailkhan Aiyubkhan Pathan V/s. Stte of Gujarat*** (supra) arose out of conviction on trial of the accused. Even in the case of ***Dilbagh Singh V/s. D.R.I.*** (supra), the facts are quite different. The applicant there was a driver of a Tata Indica car in which the co-accused was a passenger. The case was that another co-accused one Rohit, who was travelling in a Opel Corsa, had delivered the contraband to Williams. In such circumstances, it was prima facie found that there was no material to infer conscious knowledge to the applicant who was merely a driver of the car as to the substance which was delivered by the co-accused travelling in a different car.

9. For the reasons as aforesaid, in my considered view, no case for grant of bail is made out. In the result, Criminal Application is dismissed. Needless to mention that the learned Special Judge shall not be influenced by any of the observations herein, at the trial.

C. V. BHADANG, J.

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