

IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Misc. Application (Bail) No.127 of 2016

Mr. Vijay Kumar Ghale,
S/o Dhan Kumar Ghale,
R/O. Anjuna, Bardez-Goa,
Presently lodged in Judicial Custody,
Mapusa Goa.

Through his next friend,
Mrs. Laxmi V. Ghale,
Wife of Vijay Kumar Ghale,
37 years of age,
Residing at House No.1584,
Piquen Chiwar, Anjuna,
Bardez-Goa.

.... Applicant

V e r s u s

1. State

Through Police Inspector/Office In-charge
ANC Police Station,
Panaji-Goa.

2. The Public Prosecutor,

High Court of Bombay at Goa.

..... Respondent.

Mr. G. Teles, Advocate for the Applicant.

Ms. M. Pinto, Additional Public Prosecutor for the Respondent.

CORAM: C. V. BHADANG, J.
RESERVED ON: 12TH JULY, 2016
PRONOUNCED ON : 14TH JULY, 2016.

O R D E R:

The applicant is facing prosecution for the offence punishable under section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (The Act for short) on the allegation of being found in possession of 1.205 kgs of charas. According to the prosecution, on the basis of a prior information, a raid was conducted at the house of the applicant which is bearing house no.1584, Piquen, Chiwar, Anjuna, Bardez, Goa, in which from a cupboard, the contraband charas was recovered. The prosecution case is that the accused was having the key of the cupboard. After the investigation, the charge sheet is filed.

2. The learned Sessions Judge has rejected the application for bail on the ground that the quantity recovered from the applicant being commercial quantity, provisions of section 37 (1) (b) of the Act are attracted and "prima facie reasonable grounds, for believing that the accused is not guilty of such offence are missing at this stage."

3. It is submitted by the learned counsel for the

applicant that there is no material collected by the investigating agency to connect the applicant with the concerned house from where the contraband charas was recovered. It is submitted that from the prosecution case itself, it is apparent that there were other inmates in the house and as such, exclusive and conscious possession cannot be attributed to the applicant. It is next submitted that the Investigating Officer has failed to attach the key, by which the cupboard was opened. It is submitted that these aspects are sufficient to hold that prima facie the accused is not guilty of the offence.

4. The learned Additional Public Prosecutor has referred to the "house search panchanama", dated 12/11/2014 to submit that the applicant was found present in the house and had given the house number when the raiding officer and the panchas had visited the house of the applicant. The learned Addl. Public Prosecutor has submitted that the panchanama also refers to the fact about the applicant having the key of the cupboard in his right hand side pant pocket and having opened the said cupboard from

which the contraband was recovered. The learned Addl. Public Prosecutor has then referred to the statement of Mr. Anthony Sequeira, who is a neighbour of the applicant. She states that prima facie at this stage, this is sufficient to come to the conclusion that the applicant was in conscious possession of the contraband charas. The learned Addl. Public Prosecutor has referred to the title cause of the application, as also the Bail Application no.362/2014 in Crime No.24/2014, ANC PS before the learned Judicial Magistrate First Class, Mapusa to submit that the applicant has himself given his address as house no.1584, Piquen, Chiwar, Anjuna, Bardez, Goa. She submits that the quantity recovered being a commercial quantity, the provisions of section 37 (1) (b) of the Act are attracted and the learned Special Judge has rightly found that prima facie there are no reasonable grounds for believing that the accused is not guilty of such offence.

5. I have carefully considered the circumstances and the submissions made. Indisputably, the quantity recovered is a commercial quantity in which case section 37 (1) (b) of

the Act stands attracted. Under the said section, there is an embargo on the powers of the Court to release the accused on bail unless it is found that there are reasonable grounds for believing that the accused is not guilty of such offence.

6. It is true that the raiding officer has not attached the key of the cupboard from which the contraband charas was recovered. However, that may not be sufficient to hold that there are reasonable grounds showing that the applicant is not guilty of such offence within the meaning of section 37 (1) (b) of the Act. Prima facie at this stage, there is a panchanama recorded in the presence of the panchas in which it is recorded that the applicant removed the key from his right hand side pant pocket and opened the cupboard. Further the applicant has given his address as house no.1584, Piquen, Chiwar, Anjuna, Bardez, Goa, and there is also a statement of one of the neighbours. Even in the present application the accused has given the same address. The presence of some intimates other than the applicant, may not be decisive, if we consider the case of the prosecution that the contraband was recovered from a

cupboard of which the applicant was having a key. Thus, I do not find that a case for exercise of discretion is made out. The learned Special Judge shall hold the trial, as expeditiously as possible. Subject to this, the criminal application is rejected. The learned Special Judge shall not be influenced by any of the observations made herein.

C. V. BHADANG, J.

ap/-