

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.141 OF 2017**

Pierre Acquirone, Presently lodged
at Central Jail, Colvale ... Applicant
Versus
State as rep by Officer-in-charge,
Anti Narcotic Cell, Police Station,
Panaji and Anr. ... Respondents

Mr. S. Pinto, Advocate for the applicant.

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

CORAM :- C. V. BHADANG, J.

Date : 22nd June, 2017.

ORAL ORDER :

This is an application for bail. The applicant is facing prosecution for having found in the possession of 0.88 Grams of liquid LSD and 14 Grams of MDMA powder. The trial is underway, in which six witnesses, including panchas have been examined.

2. It is contended by the learned Counsel for the applicant that the learned Special Judge has recalled PW1. It is next contended that in the complaint dated 20/03/2014 by Shri Suraj Halarnkar, P.I., Anti Narcotic Cell, it is stated that the weight of the vial containing LSD liquid was 4.43 Grams while the weight of LSD liquid was 0.88 Grams. It is contended that PW1 K.

M. Varshney, Deputy Director, CFSL, Hyderabad has stated in his evidence that the weight of exhibit 1 along with cap and the adhesive tape was found to be 4.0274 grams. It is contended that there is apparent discrepancy between the weight as stated by PW1 and the weight stated in the complaint. Secondly, it is contended that the ANC Exhibit 1 contained 'liquid' while Exhibit 2 contained 'liquid residue'. On the contrary, it is the evidence of PW1 that Exhibit 1 was the residue, while Exhibit 2 was the 'liquid'. These are the grounds, on which the applicant seeks bail.

3. The application is opposed by the learned Public Prosecutor on the ground that mere recall of the witness cannot be a ground for granting bail. Secondly, it is contended that there is no discrepancy as claimed and even if there be one, it is a matter of appreciation of evidence, which will have to be done by the learned Special Judge at the trial. The learned Public Prosecutor points out that this is a case of recovery of commercial quantity of contraband, inviting the rigour of Section 37 of the NDPS Act.

4. I have carefully considered the circumstances and the submissions made.

5. In my considered view, the learned Public Prosecutor

is justified in saying that mere recall of the witness cannot entitle the applicant to be enlarged on bail.

6. Coming to the aspect of discrepancy, in the first place, it is for the learned Special Judge to go into the matter at the trial as it essentially involves the appreciation of the evidence, which exercise cannot be preempted. That apart, the complaint as well as the evidence of PW1 would show that the weight of the liquid has been consistently found to be 0.88 grams. The contention that there is some discrepancy about the description of the contents as 'liquid' and 'liquid residue' also, prima facie, cannot be accepted. The evidence of PW1 at page 23 also shows that PW1 has referred to both Exhibits 1 and 2. Be that as it may, the evidence cannot be considered threadbare at this stage. The applicant is alleged to have been found in the possession of commercial quantity of the contraband, which would attract the rigour of Section 37 of the NDPS Act. No case for exercise of discretion is made out.

7. In the result, the application is dismissed.

8. It is made clear that the learned Special Judge shall not be influenced by any of the observations herein.

C. V. BHADANG, J.

SMA