

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO.140 OF 2017**

Gary Baird, 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 the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, for short), for having found in possession of 4.140 Kgs of Methamphetamine. The twin grounds, on which the applicant is seeking bail, are that the learned Special Judge has recalled PW1 K. M. Varshney, Deputy Director of CFSL, Hyderabad and secondly, there is discrepancy as to the prosecution case that after seizure of the contraband, the seals were put, first followed by labels, while PW1 claims that labels were put, first followed by seals. According to the applicant, he is entitled to be released on bail on these two grounds.

2. The learned Public Prosecutor contends 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.

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

4. 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.

5. Coming to the second ground, the complaint dated 17/10/2013, filed by the Suraj Halarnkar, P.I., Anti Narcotic Cell shows that there were two polythene bags, which were found containing the contraband weighing 4.140 Kgs. Relevant portion in the complaint, which is relied upon by the applicant reads thus :

"I thereafter closed the mouth of dirty white

polythene bag with a self knot. Thereafter, I enclosed the dirty white colour polythene bag, back in transparent colour polythene bag and closed the mouth with self knot. I thereafter weighed the substance along with two polythene bags and was weighing 4.140 Kgs. I accordingly informed two panchas and the staff of raiding party that the weight of the Amfetamine along with two polythene bags was 4.140 Kgs. The said two polythene bags containing Amfetamine was carefully wrapped with whitish colour cloth and tied with jute thread and sealed at seven places with the seal of Anti Narcotic Cell, Panaji- Goa 2 with Ashoka Emblem by me. A label mentioning the relevant details was prepared and stuck to the said cloth parcel and the said label was signed by two Panchas and me. The said Gary Baird refused to sign the said cloth parcel containing Amfetamine was attached under panchanama and marked as Exhibit I. I then applied cello tape on the seven seals affixed on the cloth parcel."

6. PW1 has stated in the cross-examination thus :

"To the question whether my records indicate whether the label was first fixed on the cloth parcel, over which the seal was affixed, I say that I have no such records. To the suggestion that the label was first pasted on the cloth parcel and over the label, the seals were fixed, I say that it appears from looking at the cloth parcel containing M.O. no.1, that the label was first fixed on the cloth parcel, then the parcel

was tied with the jute thread and above the label and the jute thread, were affixed the seals of the police, partly to cover the label and partly on the cloth and over the jute thread. It also appears that cello tape was affixed over the seals."

7. Prima facie, it can be seen that the witness states that he is not able to indicate, as to whether the label was first fixed on the cloth parcel over which the seal was affixed. Be that as it may, this is essentially a question requiring appreciation of evidence, which the learned Special Judge shall consider at the trial. The applicant is charged with an offence of having found in possession of commercial quantity of contraband, which would attract the rigour of Section 37 of the NDPS Act. The grounds urged are not sufficient for exercising discretion in favour of the applicant.

8. The application is, accordingly, dismissed.

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

C. V. BHADANG, J.

SMA