

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 134 OF 2017**

Jane Tregunna, 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 under Sections 22(c), 22(b) and 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), for having found in the possession of 4.12 Grams of LSD, 2.44 Grams of MDMA and 250 Grams of Charas and the trial is stated to be in progress before the learned Special Judge at Panaji.

2. The applicant had sought bail from the learned Special Judge, which application has been rejected on 21/4/2017. Hence, the applicant has approached this Court.

3. It is contended by the learned Counsel for the applicant that the learned Special Judge, has ordered recall of PW1 Dr. Deepak Middha, who is Assistant Director of CFSL, Hyderabad. This is the first ground, on which the applicant is seeking bail, as according to the applicant, the trial would be prolonged on account of such recall, causing prejudice to the applicant. Secondly, it is contended that in the complaint dated 04/10/2014, P.I., Suraj Halarnkar of Anti Narcotic Cell Police Station has stated that the weight of LSD liquid along with the vial was found to be 9.01 Grams, while the weight of LSD liquid was 4.12 Grams. It is contended that PW1 Dr. Deepak Middha has stated in his evidence that the weight of brown coloured liquid in the vial was 5.8 Grams. It is submitted that thus there is discrepancy between the weight of the LSD liquid as stated by the complainant as against the weight stated by PW1 Dr. Deepak Middha, which raises a doubt about the identity of the specimen / sample sent for chemical analysis. On these two grounds, the applicant seeks bail.

4. The application is opposed by the learned Public Prosecutor. It is submitted that merely because PW1 is recalled, would not entitle the applicant for bail. Secondly, it is contended that if at all there is any discrepancy in the weight as claimed by

the applicant, it is a matter of appreciation of evidence, which can be done by the learned Special Judge. 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.

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

6. In my considered view, the learned Public Prosecutor is justified in saying that mere recall of a witness, would not entitle the applicant for bail. The learned Special Judge, after considering the circumstances and in exercise of the powers under Section 311 of Cr.P.C., has decided to recall PW1, which order is confirmed by this Court, by a separate order of even date in WPCR No.89/2017. At any rate, the contention that because PW1 is recalled, the applicant should be released on bail, to my mind, cannot be accepted.

7. In so far as the discrepancy between the weight as claimed by the complainant and by the Chemical Analyser is concerned, it is essentially a matter of appreciation of the evidence. It is not possible to preempt the trial by appreciating

the evidence threadbare. It is always open for the applicant to point out the discrepancy at the trial, which the learned Special Judge can appropriately consider. That apart, a careful perusal of the evidence of PW1 (at pages 24 and 25 of the compilation), would show that all that this witness has stated is that he removed portion of the liquid for testing and the remaining liquid was 3.6 Grams, which was put back in the original glass bottle. This witness further states that he found the weight of empty bottle 5.80 Grams. Thus, prima facie, it cannot be accepted that there is any discrepancy. I would hasten to add that this Court has not expressed any final opinion on the subject and the learned Special Judge shall independently consider the rival contentions as may be raised by the parties at the trial. Offence alleged against the applicant involves commercial quantity of the contraband, which would attract the rigour of Section 37 of the NDPS Act. Thus, I do not find that any case for grant of bail is made out.

8. In the result, the application is dismissed.

C. V. BHADANG, J.

SMA