

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 223 OF 2017**

Mr Sunday Kamah Onyemaechi
S/o Kamah Onyemaechi,
Age 35 years, unmarried,
Business, Nigherian National,
Permanent resident of Nigeria,
Presently lodged in Judicial Custody,
Modern Central Jail Colvale,
Colvale, Bardez, Goa.

...Applicant

V e r s u s

1. State of Goa,
(As. Rep. By Officer in charge/Police
Inspector,
Anti Narcotic Cell(ANC) Police Station,
Panaji. Goa.

2. The Public Prosecutor,
High Court Building,
Altinho, Panaji, Goa.

...Respondents

Mr Salil Satish Saudagar, Advocate, for the Applicant.

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

CORAM: NUTAN D. SARDESSAI, J
DATED: 15th September 2017

PC:-

1. Heard Shri Saudagar, learned Advocate for the Applicant and Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State on the application for bail filed on his behalf.

2. It is not in dispute that the Applicant was placed under arrest on 26.07.2017 by the Respondent and that he was allegedly found in possession of 50 grams of suspected Cocaine worth ₹5 lakhs (five lakhs only) and the same was attached under a panchanama. An offence vide the Crime no.15/2017 was accordingly registered against him under Section 21(b) of the N.D.P.S. Act 1985 at the Anti Narcotic Cell Police Station.

3. It was the contention of Shri Saudagar, learned Advocate for the Applicant that the bail application came to be rejected by the learned Addl. Sessions Judge, Mapusa, on the premise primarily that he was likely to jump bail. The quantity of cocaine found was only 50 grams which was a variable quantity and the bar under Section 37 of the Act would not apply to resist the application. Besides, the applicant was placed under arrest in connection with the Calangute Police Station Crime no.17/2015 under Section 7(1)(3) of the Foreigners Act 1948 read with Section 14 of the Foreigners Act, 1946 apart from the Passport Act that he had been granted bail in the said Crime and reporting was before the Court at all the dates of the hearing upon the filing of the chargesheet against him. He placed reliance in *Mr Mohamad Ziawalla vs. State of Goa [CRMA No.118 of 2004]* where bail was granted to the Applicant who was allegedly found in possession of less than 1000 grams of Charas being a variable quantity and where the learned Single Judge had held that the fact that the accused was not from the State was not good enough reason to deny him the bail. Shri Saudagar further

placed reliance in *Balchandra Shirodkar vs. Union of India* [CRMA no.199 of 2006] in which the Applicant found in possession of 98 grams of Heroin was again set at liberty pursuant to the Order of the learned Single Judge of this Court to buttress his case that variable quantity of Cocaine was allegedly found with the Applicant and that he was entitled to bail. Besides being a Foreign National, it was not a criteria not to give him the benefit of bail. The non-availability of the Passport was another factor which would rule out the possibility of him jumping bail and hence he be ordered to be released on bail.

4. Shri S. R. Rivankar, learned Public Prosecutor submitted that the Applicant was a foreign national but considering that the rigours of Section 37 of the Act did not strictly apply to his case, he could be set at liberty by imposing certain conditions including timely reporting to the Police Station at regular intervals to ensure his presence at all times.

5. Admittedly, the purported quantity of Cocaine found with the Applicant is 50 grams to which the rigours of Section 37 of the Act would not apply. The fact that he is a Foreign National is not singularly disputed but at the same time it is also equally an admitted position that he is undergoing prosecution under the Foreigners Act and the Passport Act and where he is reporting regularly before the concerned Court upon the chargesheet being filed against him. The chances of the Applicant jumping bail are considerably remote taking into account the fact that his Passport is misplaced. Thus, striking

a balance on the availability of the Applicant and his entitlement to bail and in the circumstances, i allow the application on the following terms :

(i) He is ordered to be released on bail upon executing a personal bond of ₹50,000/- and on furnishing one local surety in the co-extensive amount to the satisfaction of the learned Addl. Sessions Judge-1, FTC Court, Mapusa. He shall report at the Police Station once every fortnight till further orders. He shall not intimidate the witnesses or otherwise tamper with the course of evidence, if any, at the progress of trial when the chargesheet is being filed.

6. The Application is accordingly disposed off.

7. Authenticated copy of this order be issued to the parties in accordance with law.

(NUTAN D. SARDESSAI, J)