

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 250 OF 2017
IN
CRIMINAL APPEAL NO. 48 OF 2017

CHIDI OSCITA OKONKOWA, PRESENTLY
IN JUDICIAL CUSTODY AT COLVALE., ... Applicant

Versus

THE STATE OF GOA, THR. ANJUNA
POLICE STATION, V. A. KAVLEKAR AND
ANR., ... Respondents

Shri T. George John, Advocate for the applicant.
Shri S.R.Rivankar, Public Prosecutor for the respondents.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 11th October 2017

P.C.

By this application, the applicant has prayed for his release on bail by suspending the sentence pending the appeal.

2. Heard Shri T.George John, learned counsel for the applicant.

3. The applicant is a Nigerian National, who has been convicted for offence punishable under Section 21(b) of the N.D.P.S. Act, 1985, by the Sessions Judge, Panaji, who sentenced him to undergo R.I. for two years and a fine of Rs.50,000/-, in default to undergo R.I. for six months. The

applicant is in custody since 28.7.2016. The applicant has already undergone half of the sentence imposed upon him.

4. It is submitted by the learned counsel appearing for the applicant that the applicant has been doing a legal business of Export of T-shirts and only he being foreigner, should not be refused bail, as according to him, there should not be discrimination and the personal liberty of the applicant may not be curtailed, in view of Article 21 of the Constitution of India. The learned counsel, on instructions, submits that the applicant will deposit the fine amount within 30 days. He also drew my attention to the impugned judgment, wherein after the contraband was sealed, the seal was not sent to Dy.S.P. but to P.I. It is also argued that the first panch turned hostile and the second panch was a stock witness of the police. The applicant was on bail during the trial.

5. Per contra, the learned Public Prosecutor opposed the suspension of sentence by stating that the panchanama has been duly proved by PW 4 - Ravindra Kalangutkar, PW 8 - Serafin Dias and PW 11 - Ramchandra Shinde. The applicant had already been convicted for overstaying in India, who is doing an illegal business of Narcotic in the State of Goa. Looking to his antecedents, there are chances of his abscondance. Therefore, the learned Public Prosecutor opposed the prayer of the

applicant.

6. After having considered the respective submissions at bar, it is pertinent to note that the learned Sessions Judge had convicted and sentenced the applicant for having possessed small quantity of cocaine, weighing about 4.90 grams. The applicant is in jail for more than one year. It is also a fact that he was released on bail by the trial Court during the pendency of the case. The learned Public Prosecutor, in reply, states that the passport of the applicant has already been confiscated by Calangute Police, as the applicant has overstayed in India. It appears from the reply that passport of the applicant bearing no.AOO221131 issued on 15.2.2008 was valid till 14.2.2013 and Visa No.AF653499 issued on 16.6.2009 was valid till 16.10.2009. An offence against the applicant appears to have been registered for his illegal stay in this country, under the provisions of Foreigners Act, 1946 and under the provisions of the Passport Entry Act, 1920 at Anjuna Police Station, wherein he was convicted and sentenced to undergo imprisonment for 60 days and fine of Rs. 5000/-. It is not shown as to whether the applicant was involved in similar offence in the past. Though, it is submitted by Shri Rivankar, learned Public Prosecutor, that the Nigerian Nationals are habitual to repeat the offence of drug trade and, therefore, if the applicant is released, there is every likelihood of repeating the same offence as Nigerians do not show respect to the Judicial

system of this Country. This is a general statement which, at this stage, cannot be accepted as true in all the cases.

7. Having considered the aforesaid submissions and looking to the nature of the offence and period already undergone, execution of the sentence of the applicant needs to be suspended, pending the appeal, in view of the following order:-

Order

- (i) Pending the appeal, execution of sentence be suspended on applicant furnishing bail in the sum of Rs.30,000/- with two solvent sureties in the like amount and subject to deposit of fine amount in the Sessions Court.
- (ii) The applicant, during the pendency of the appeal, shall not leave the State of Goa and shall not involve in similar offence.
- (iii) It is made clear that if the applicant commits similar offence, his bail shall stand automatically cancelled.
- (iv) Application stands disposed of accordingly.

PRITHVIRAJ K. CHAVAN, J.

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