

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 58 OF 2018**

Mr. Rakesh Kumar,
Son of Mr. Giachand,
Indian National,
Major of age,
Resident of Krishna Guest House,
Khalchawada, Arambol, N/o Lungraon,
Lungaon (125), Baroti, Mandi,
Dharmapur,
Presently in Judicial custody,
at Colvale Jail,
Colvale, Bardez-Goa.

..... Applicant

V e r s u s

1. State of Goa,
(Through ANC Police Station)
Panaji, Tiswadi-Goa.
2. Public Prosecutor,
High Court of Bombay at Goa.

.... Respondents

Shri G. Teles, Advocate for the Applicant.

Shri S. R. Rivankar, Public Prosecutor for the Respondent/State.

CORAM: C. V. BHADANG, J.
Reserved on: 22nd March, 2018.
Pronounced on: 26th March, 2018.

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 (Act, for short) for having found in possession of commercial quantity of LSD.

2. The prosecution case is that; the applicant was found in possession of two perforated paper sheets which were marked as Exhibit 1 and Exhibit 2. In so far as the Exhibit 2 is concerned, it was not detected with LSD as per the report of the chemical analyzer. In so far as the Exhibit 1 is concerned, it was one perforated multi-color paper sheet printed with cartoon faces on it having total 200 square pieces and it was detected with LSD on it. The weight of the perforated paper sheet (without the polythene cover) was 2.1642 grams.

3. Before the learned Special Judge, a Junior Scientific Officer in CFSL Hyderabad was examined as P.W.2, who has stated about the manner in which the test is conducted. It has come in his evidence that the LSD (which is smeared on the paper) is extracted in a solvent i.e. methanol by dipping the paper in the solvent and then the solvent is tested for presence of LSD. It has further come in his evidence that the weight of the perforated sheet of paper containing 200 square pieces was 2.1642 grams prior to its testing and

2.1458 grams subsequent to the conduction of the test.

4. The applicant sought bail before the learned Special Judge on the ground that the quantity allegedly seized from the possession of the applicant cannot be said to be commercial quantity and as such, the bar under section 37 of the Act will not apply. On behalf of the applicant reliance was placed on the order passed by this Court in **State through Police Inspector Vs. Monday Felix Odede**, Criminal Application (Main) No.122/2017 decided on 13/6/2017. The learned Special Judge found that the said case was distinguishable. The learned Special Judge found that the quantity seized from the applicant is a commercial quantity and he is not entitled for bail. In that view of the matter the application came to be rejected.

5. I have heard Shri Teles, the learned counsel for the applicant and Shri Rivankar, the learned Public Prosecutor for the respondent/State. With the assistance of the learned counsel for the parties, I have gone through the evidence of PW.2, the report dated 18/5/2015 and the order passed by the learned Special Judge.

6. It is submitted by Shri Teles, the learned counsel for the applicant that all the 200 pieces from the perforated sheet having been examined together,

the possibility of the absence of LSD on some of the perforated pieces cannot be ruled out. It is submitted that in any event the quantity seized cannot be said to be commercial quantity and the rigors of section 37 of the Act will not apply. He submitted that this Court in the case of **Monday Felix (supra)** and in **State Vs. Mr. Rocky Fernandes** (CRMB No.56/2017) decided on 13/6/2017 had refused to interfere with the order granting bail in similar circumstances. He, therefore, submits that the applicant is entitled to be released on bail.

7. On the contrary it is submitted by Shri Rivankar, the learned Public Prosecutor that the reliance placed on the order passed in the case of **Monday Felix (supra)** and **Rocky Fernandes (supra)** is misplaced. It is submitted that in those cases there were separate pieces of paper found which were allegedly seized and it was the State which had approached this Court for cancellation of bail. It is submitted that the facts as obtaining in the present case are clearly distinguishable, inasmuch as there was a single sheet of paper found in possession of the applicant having 200 perforated pieces and the sheet weighed 2.1642 grams, without the polythene cover. The learned Public Prosecutor pointed out that as per the entry at serial no.133 of the table appended to the Act, commercial quantity of LSD is 0.1 grams and above. He submitted that no case for grant of bail is made out. He submitted that the

applicant hails from Himachal Pradesh and may not be available, in the trial, which is part heard.

8. I have carefully considered the rival circumstances and the submissions made. Prima facie it appears that insofar as the sheet Exhibit 1 is concerned, it was perforated sheet containing 200 individual pieces which together weighed 2.1642 grams without the polythene cover. The evidence of PW.2 prima facie does not show that all such pieces were tested together for presence of LSD . In my considered view the present case is distinguishable on facts than the case of **Monday Felix (supra) and Rocky Fernandes (supra)**. That apart, in those cases the State had approached with a request for cancellation of the bail. It is now well settled that the bail granted to an accused can be canceled only on the basis of strong grounds. In those cases this Court, found that no interference was called for in the order passed by the learned Special Judge while exercising discretion to grant bail.

9. The learned counsel for the applicant had relied upon the cross examination of PW.2 in which he had admitted that P.W.2 has not carried out the quantitative analysis of Exhibit 1 and had carried out only qualitative analysis. It is evident that the evidence of any witness has to be read as a whole. The trial is still pending and is part heard. The matter involves

appreciation of evidence which can only be done at the trial. Any attempt to record a finding one way or the other may cause prejudice to either of the parties. Considering the overall circumstances, I do not find that a case for grant of bail is made out. The application is accordingly dismissed. The learned Special Judge to proceed with the trial as expeditiously as possible.

C. V. BHADANG, J.

Ap/