

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPPLICATION (BAIL) 148 OF 2018

MIKEL OKORO,
Presently in Judicial Lockup

... Applicant

Versus

State, Thr. Anti Narcotic Cell, Panjim and Ant.

... Respondent

Ms. Maria Silvia Palha, Advocate for the Applicant.

Mr. S. R. Rivankar, Public Persecutor for the State.

Coram:- M. S. SONAK, J.

Date:- 16th May, 2018

P.C.:

Heard Ms. Maria Silvia Palha, learned Advocate for the Applicant and Mr. S. R. Rivankar, learned Public Prosecutor for the State.

2. The applicant, a Nigerian national who is alleged to have been involved in an offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985" for short), seeks bail. The application for bail stands rejected by the Special Court by its Order dated 30th April, 2018.

3. Ms. Palha, learned Advocate for the applicant submits that there is no material on record which prima facie indicates that

Charas was found in possession of the applicant. She submits that there was no field test carried out as alleged. She submits that if indeed such field test was carried out, it was the duty of the respondent to have been produced such report before the Sessions Court or for that matter, this Court. She submits that the panchas, in the present case, have been "hired" by the respondent-State. She submits that such panchas are not independent panchas and their statements, do not appear to have been recorded contemporaneously. Ms. Palha, learned Advocate for the applicant submits that in the matter of this nature, even report from CFSL will not suffice and only medical authorities will be in a position to certify whether the substance allegedly found in possession of the applicant is really a Charas or not. She submits that the arrest of the applicant is contrary to the provisions of law as interpreted by the Hon'ble Supreme Court in the case of Arnesh Kumar v/s. State of Bihar & Anr. [(2014) 8 SCC 273]. She submits that the arrest is on account of the fact that the applicant happens to be a Nigerian national. She submits that the police authorities have a bias against African nationals. She submits that the allegations which are concerned to breaches of the provisions of the Foreigners Order 1948 or the Pass Port Entry Act, 1920 are quite frivolous and any case unconnected in the present matter. She submits that in Crime No.218 of 2017, the applicant, has already been enlarged on

bail and there is no allegation that the applicant, has not complied with the terms and conditions of such bail. For all these reasons, Ms. Palha, learned Advocate for the applicant submits that he is entitle to be enlarged on bail.

5. Mr. Rivankar, learned Public Prosecutor submits that the seizure panchanama clearly indicates that suspected Charas of 1.150 kg were seized from the person of the applicant. He points out that the seizure panchanama very clearly indicates that field test was carried out with the help of field testing kit and the results indicates the substance seized from the person of the applicant was Charas. Mr. Rivankar, learned Public Prosecutor points out that the quantity seized is commercial quantity. He submits that the applicant is involved in at least one similar matter in the past. He submits that bail was granted in the said matter because the quantity seized was not commercial quantity. He points out that the applicant has no permanent address in Goa and there was issue with regard to his travel documents. Mr. Rivankar, learned Public Prosecutor points out that in terms of Section 37 of the NDPS Act 1985, there is bar for grant of bail unless, there are reasonable grounds for believing that the applicant is not guilty of any offence under the NDPS Act or is not likely to commit any offence while on bail. Mr. S.R. Rivankar, learned Public Prosecutor

also points out that Arnesh Kumar(supra) principles have been substantially complied with but in any case, considering the fact that the offence for which the applicant is charged is punishable for the term of over 10 years, strict compliance with the Arnesh Kumar (supra) is not warranted. For all these reasons, Mr. S.R. Rivankar, learned Public Prosecutor submits that this application for bail may be rejected.

6. In order to appreciate the rival contentions, the records were called for and have been perused. The record, indeed contains, not only seizure memo but also a search Panchanama which bears signatures of the two panchas. The search panchanama prima facie indicates that the safeguards which the NDPS Act has provided in the matter of seizure stand complied. The search panchanama makes specific reference to the field test done by means of field test kit. Although, results of such field test can never be regarded as conclusive, at least at the state of consideration of the application for bail, there is no reasons to exclude such results. The result indicated that the substance weighing out 1.150ks which will allegedly seized from the person of the applicant was Charas.

7. Section 37 of the NDPS Act inter alia provides that no person accused of an offence punishable under section 19 or section 24 or

section 27A and also for offences involving commercial quantity, shall be released on bail or on his own bond unless, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. It means that though there is no absolute embargo in the matter of grant of bail, at least until such conditions are satisfied, there is no question of releasing such a person on bail.

8. In the present case, at least is prima facie credence will have to be given to the field test. The allegation that the panchas were 'hired' or that they were not independent, at least in present stage are only allegations which, no doubt will be tested in the course of trial. There is also an issue of the applicant being involved in yet another case i.e. Crime No.218 of 2017 again, under the NDPS Act itself. There are issues concerning the travel documents of the applicant. On cumulative consideration of all these facts, it cannot be said that this is a fit case to enlarge the applicant on bail. As regards the allegations of bias against the respondents itself suffice to state that these are the allegations made without any backing of statistics or material. On the basis of such allegations, it is neither proper for an applicant to seek bail nor will it be proper for any Court, to release the applicant on bail.

9. For the aforesaid reasons, this application for bail is rejected.

mv

M. S. SONAK, J.