

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.175 OF 2018

Hassan Azadeh,
Aged 34 years, Iranian National,
Presently lodged under Judicial Custody
at the Colvale Central Jail,
Colvale, Bardez-Goa.

... Applicant

Versus

1. Union of India,
as represented by Officer-in-charge,
Narcotics Control Bureau,
Home in the Woods Colony,
Porvorim, Goa.

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

... Respondents

Shri S. Pinto, Advocate for the Applicant.
Shri Mahesh Amonkar, Central Government Standing Counsel
for the Respondent No.1.

Coram : NUTAN D. SARDESSAI, J.

Reserved on : 24th July, 2018

Pronounced on : 26th July, 2018

ORDER :

The applicant once again seeks his release on bail by the application coming up for disposal today.

2. Heard Shri S. Pinto, learned Advocate for the applicant who submitted that three witnesses were examined by the respondents and the IO was under examination. The

evidence of the Chemical Analyzer was not adequate to show that the applicant was in possession of the commercial quantity and in that context referred to the statement on oath of Shri S.N. Rasool, Senior Scientific Officer to buttress his case. Therefore in the absence of any material to hold that the applicant was in possession of the commercial quantity, he was entitled to bail. He placed reliance in **Lawrance D'Souza V/s. State of Maharashtra & Anr. [1992 Cr.L.J. 399]** in support of his contention. His next argument was that no witness had deposed that the applicant was in possession of the contraband. The respondents had not proved the safe custody of the parcel nor had any witnesses been examined from the office of the courier service. His next contention was that the applicant being a foreigner was no bar to order his release on bail and hence appropriate orders had to be passed in the applicant's favour.

3. Shri M. Amonkar, learned Standing Counsel for the Union of India submitted that this was one of a series of applications for bail moved by the applicant, the last being the Criminal Application (Bail) no.166/2017 which came to be dismissed by this Court vide its order dated 01/09/2017. The same

grounds were urged in that application for bail which were duly considered by this Court while dismissing his application. There was no change in circumstance since then till now and therefore the application had to be rejected.

4. i have considered their submissions, perused the judgment in **Lawrence D'Souza** (supra), apart from the deposition and decide the application accordingly. At the outset, there was no rebuttal of the fact that three witnesses were examined on behalf of the respondents and the fourth was the Investigating Officer who was under examination. At the outset, i would not be inclined to look into the contention of Shri Pinto about the evidentiary value of the statement of the Chemical Analyzer Rasool Pw1 since that aspect of the matter has been dealt with considerably while disposing of the earlier Criminal Application (Bail) No.166/2017 vide the order dated 01/09/2017. Moreover, the applicant has not been able to show any change in circumstances between that date till now and on that premise a relook into the evidence of the Chemical Analyzer would not be in order. Although it has been his contention that no witnesses examined thus far have deposed about the possession of the applicant with the

contraband, no statement whatsoever has been placed on record to appreciate such a contention.

5. Besides, at the stage of framing of charge what the learned Judge has to look into is the material which would enable him/her to frame charge and it is not as if the respondent is bound to lay its case threadbare. This ground too does not enure to the benefit of the applicant. In so far as the aspect of the safe custody is concerned, there may appear force in his contention that no witness has been examined on behalf of the courier agency but the case at the threshold of producing adequate material to frame charge and the possibility of the respondent leading evidence in that regard later cannot be seen as a remote possibility.

6. The judgment in **Lawrence D'Souza** (supra), does not in any manner advance the case of the applicant when he has not been able to bring forth any change in circumstances from the date of the dismissal of his earlier bail application till now and therefore to canvass that his liberty is in peril or that the respondents would act in an untrammelled and an arbitrary manner in exercise of their powers would not stand him in

good stead. The reliance on this judgment is not at all germane to his case and is misplaced to say the least. Having found that there is no change in circumstances from the date when his last bail application came to be decided till now, the question of considering his status as a foreigner and of there being no bar to release a foreigner on bail would not arise when no case whatsoever is made out for the grant of bail.

7. In the circumstances therefore and without ignoring the fact that the alleged cocaine found with him was a commercial quantity attracting the rigors of Section 37 of the Act, the applicant would not be entitled to the benefit of bail and hence the application found wanting in merits is dismissed.

NUTAN D. SARDESSAI, J.

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