

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 117 OF 2018

OMER MIZRAHI, PRESENTLY LODGED AT
CENTRAL JAIL, COLVALE., ... Petitioner

Versus

STATE, AS REP. BY OFFICER
IN-CHARGE/POLICE INSPECTOR, ANTI
NARCOTIC CELL POLICE STATION AND
ANR., ... Respondents

Shri Sergio Pinto de Santana with Ms. Dolorosa Tulkar,
Advocates for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 27th June 2018

ORAL ORDER:

The challenge in this petition is to the order dated 29.05.2018, passed by the learned Sessions Judge in Crime No. 27/2017, by which, the period for filing the chargesheet has been extended by a period of sixty days, under Section 36A (4) of the NDPS Act.

2. The petitioner was arrested on 01.12.2017, on the allegation of having found in possession of 10.42 grams of LSD and 2.06 kilograms of charas, both of which, are commercial quantities. As such, Crime No. 27/2017 was registered, against the petitioner at ANC police station on 02.12.2017, under

Sections 20(b)(ii)(C) and 22(c) of the NDPS Act and the investigation is stated to be in progress. The period of 180 days for filing the chargesheet, under Section 36A(4) of the NDPS Act expired on 30.05.2018. Prior thereto, the learned Public Prosecutor filed an application for extension of time on 25.05.2018. The reason given for extension of time was that the LSD was sent to CFSL, Hyderabad. However, CFSL, Hyderabad refused to examine the exhibits, for the reason that the laboratory does not have the standard reference material of LSD. Hence, the investigating agency forwarded the exhibits to CFSL, New Delhi and the investigating officer, is said to be following up with CFSL, New Delhi, to expedite the report.

3. It appears that at the time of the raid, the exhibits were tested with the help of a field kit, in which, they have been found to have tested positive for LSD and charas.

4. I have heard the learned Counsel for the petitioner and the learned Public Prosecutor for the respondents. Perused record and the impugned order passed.

5. It is contended by the learned Counsel for the petitioner that the petitioner was produced two days prior to the remand date i.e. on 29.05.2018. However, the petitioner was not given any opportunity to file the reply or to oppose the application. It

is further contended that the petitioner, being an Israeli national, is also not conversant with English and as such, is unable to understand the proceedings, which would amount to failure of principles of natural justice.

6. The learned Public Prosecutor has supported the impugned order. It is submitted that the petitioner is allegedly found in possession of LSD and charas. But, for the receipt of the report from CFSL, New Delhi, the investigation is complete. It is submitted that the investigating officer has no direct control over CFSL, Hyderabad or CFSL, New Delhi and as such, was handicapped from producing the report within time.

7. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out, at this stage.

8. Insofar as the the contention that the petitioner is not conversant with English language, the learned Sessions Judge has observed in para 4 of the order dated 15.03.2018 that the remand papers produced on record by the investigating officer clearly showed that since 02.12.2017, when the petitioner was produced before the learned Magistrate at Mapusa, he has been conversing in English. It is not possible to go into this disputed question at this stage. However, prima facie, the finding

recorded by the learned Sessions Judge, which is based on the remand papers, shows that the petitioner was conversing in English. The order dated 29.05.2018, also does not show that time was sought as such, for filing reply. The extension was sought on the ground of a solitary reason of the absence of the CFSL report. In my considered view, the learned Public Prosecutor is right in contending that the investigating agency, may not have any control over CFSL, Hyderabad or CFSL New Delhi. However, the investigating officer has now made a statement that the investigating officer shall take special efforts for expediting the report. Subject to this, the petition is dismissed.

C. V. BHADANG, J.

EV