

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL REVISION APPLICATION NO. 52 of 2018**

|                                         |     |             |
|-----------------------------------------|-----|-------------|
| Valy D'Costa                            | ... | Petitioner  |
| Versus                                  |     |             |
| State, Rep. by Officer-in-Charge & Anr. | ... | Respondents |

\*\*\*

Shri Kamlakant Poulekar, Advocate for the Petitioner.

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

**Coram :- C. V. BHADANG, J.**

**Date :- 19<sup>th</sup> September 2018**

P.C.

Heard Shri Poulekar, the learned Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent-State.

2. By consent of parties, the criminal revision application is being disposed of finally.

3. The petitioner has been arrested on 01.02.2018 by the Anti Narcotic Cell Police Station, Panaji, on the allegation of having found in possession of 1.5 kgs. of charas and 1.1 kgs. of ganja. An offence at Crime No. 05/2018, under

Sections 20(b)(ii)(B) and 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, for short), has been registered against the petitioner. At the relevant time, when the impugned order was passed, the investigation was in progress.

4. Undisputedly, 180 days period for investigation, as prescribed under Section 36A (4) of the NDPS Act expired on 30.07.2018. The respondent moved an application for extension of time before the learned Sessions Judge on 25.07.2018. The learned Sessions Judge, by the impugned order, passed on the same day, has granted extension as prayed, which order is subject matter of challenge in this criminal revision application.

5. It is not in dispute and is in fact, a matter of record that on 07.08.2018, the petitioner has sought for bail and has thus, “availed of his indefeasible right to get bail”, on account of non filing of the chargesheet within the prescribed period. Consequently, the petitioner has availed of his right for seeking bail, prior to the filing of the chargesheet, in as much

as the investigation has been completed and the chargesheet has been filed on 17.09.2018.

6. Shri Poulekar, the learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of (i) **Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910**; (ii) **Sanjay Kumar Kedia Vs. Intelligence Officer, Narcotic Control Bureau & Others, (2011) 1 SCC (Cri) 1099** and (iii) **Hitendra Vishnu Thakur & Others Vs. State of Maharashtra & Others, AIR 1994 SC 2623**, in order to submit that the petitioner was not granted an opportunity of hearing, before the impugned order of extension was passed. Specific reliance was placed on paras 4, 9 and 10 of the decision in the case of **Sanjay Kumar Kedia** (supra) and para 28 in the case of **Hitendra Vishnu Thakur** (supra) in order to submit that the petitioner has acquired indefeasible right to be released on bail.

7. Shri Rivankar, the learned Public Prosecutor for the respondents submits that the learned Sessions Judge

already having granted extension and the chargesheet having been filed, the petitioner cannot be said to be entitled to indefeasible right to be released on bail. In the alternative he submitted that, looking to the contention that the petitioner was not granted an opportunity of hearing, this Court may remit the matter back to the learned Sessions Judge.

8. Having heard the learned Counsel for the parties and on perusal of record, I do find that the learned Sessions Judge was in error in passing the impugned order, without hearing the petitioner and there is clear breach of principles of natural justice. In that view of the matter, the impugned order is hereby set aside. The application filed by the respondent under Section 36A (4) of the NDPS Act is remitted back to the file of the learned Sessions Judge, who shall decide the same after hearing the parties and in accordance with law. The learned Sessions Judge shall reconsider the Bail Application No. 63/2018, filed by the petitioner on 07.08.2018, afresh and in accordance with law, depending upon the outcome of the application for extension of time. Needless to mention that this Court has not expressed any

opinion on the merits of the application for extension of time or grant of default bail.

The criminal revision application is disposed of.

**C. V. BHADANG, J.**

EV