

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 55 of 2018**

Stephen Humbert, ... Petitioner
Versus
State, Rep. by Officer-in-Charge & Anr. ... Respondents

Ms. Caroline Collasso with Shri Kamlakant Poulekar,
Advocates for the Petitioner.

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

Coram :- C. V. BHADANG, J.

Date :- 3rd October 2018

ORAL ORDER:

Heard Ms. Collasso, the learned Counsel for the petitioner and Shri Phaldessai, the learned Additional Public Prosecutor for the respondents.

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

3. The petitioner was arrested on 17.01.2018, on the allegation of having been found in possession of LSD weighing 13.6 grams, cocaine weighing 53.7 grams and charas weighing 6 grams. Accordingly, an offence was registered at

Crime No. 2/2018 by the Anjuna P.S. and the investigation is in progress.

4. The learned Public Prosecutor filed an application under Section 36A (4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, for short), for extension of time to file chargesheet by 60 days. The learned Sessions Judge, by an order dated 10.09.2018, has granted extension as prayed. It is this order, which is subject matter of challenge in this revision application.

5. The only contention raised on behalf of the petitioner is that no notice was issued to the petitioner and the petitioner was not heard before passing the impugned order and thus, the impugned order is in breach of principles of natural justice. It is also contended that the application, filed by the Public Prosecutor shows non application of mind and does not make out any case. Thirdly, it is contended that the ground for extension only pertains to inability of the Public Prosecutor in procuring the standard samples of LSD and there was no reason, not to file chargesheet, insofar as

the alleged substances, cocaine and charas are concerned.

6. Shri Phaldessai, the learned Additional Public Prosecutor, in all fairness, does not dispute that the petitioner/accused has to be heard, prior to grant of the extension. It is submitted that, if this Court is inclined to interfere, the Sessions Judge may be directed to reconsider the application afresh, after hearing the parties.

7. Ms. Collasso, the learned Counsel for the petitioner pointed out that the petitioner has already “availed of his indefeasible right to be released on bail”, on account of non filing of the chargesheet within the prescribed period and that the bail application is pending before the learned Sessions Judge.

8. Considering the overall circumstances, I do find that the learned Sessions Judge was in error in granting the extension, without hearing the petitioner/accused. Reliance in this regard can be placed on the decision of the Supreme Court in the case of **Hitendra Vishnu Thakur & Others Vs.**

State of Maharashtra & Others, AIR 1994 SC 2623. This Court vide order dated 19.09.2018 in Criminal Revision Application No. 52/2018, in similar circumstances had remitted the application for extension to the learned Special Judge. In such circumstances, the following order is passed:

ORDER

- (i) The criminal revision application is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application for extension filed by the learned Public Prosecutor, under Section 36A (4) of the NDPS Act, is re-stored back to the file of the learned Sessions Judge, for deciding it afresh, after hearing the parties, in accordance with law.
- (iv) The learned Sessions Judge shall decide the application for bail on its own merits, depending upon the outcome of the application for extension.
- (v) Needless to mention that this Court has not expressed any opinion on the merits of the application for extension of time or on the application for bail.
- (vi) The criminal revision application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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