

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 294 OF 2018

Ivan Minguel ... Applicant
Versus
State & Another ... Respondents

Shri Jose Peter D'Souza with Ms. Caroline Collasso and Shri S. Pinto, Advocates for the Applicant.

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

CORAM:- C.V. BHADANG, J.

DATE:- 30th OCTOBER 2018.

ORAL ORDER:

This is an application for suspension of sentence and for release of the applicant-accused, on bail.

2. The applicant was prosecuted for the offences punishable under Sections 20(b)(ii)(B), 21(b) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, for short) in NDPS Criminal Case No. 16/2014, on the allegation of having found to be in possession of 72 grams of MDMA, 5.5 grams of cocaine, 2.5 grams of liquid LSD and 785 grams of charas.

3. Before the learned Sessions Judge, the Deputy Director from the office of the CFSL Hyderabad, K.M. Varshney was examined as PW-1. The learned Sessions Judge by a

judgment and order dated 30.06.2016 has convicted the applicant for the offences as charged. The applicant has been sentenced to suffer rigorous imprisonment for a period of 15 years and to pay a fine of Rs.1 lakh, for the offence punishable under Section 22(c) of the NDPS Act and in default to undergo further rigorous imprisonment for a period of one year.

Insofar as the offence under Section 21(b) of the NDPS Act is concerned, the applicant is sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.50,000/- and in default to suffer further rigorous imprisonment for a period of one year.

A similar sentence of seven years and fine of Rs.50,000/- has been awarded for the offence punishable under Section 20(b)(ii)(B) of the NDPS Act.

All the sentences are directed to run concurrently.

4. The applicant was arrested on 14.01.2014 and the period of detention already undergone has been directed to be set off against the term of imprisonment awarded to him.

5. I have heard the learned Counsel for the applicant and Shri Rivankar, the learned Public Prosecutor for the respondent-State.

6. On behalf of the applicant, reliance is placed on a Division Bench judgment of this Court in the case of **Deen Khan Mohamad Vs. State of Goa** (Criminal Appeal No. 27/1997) and other connected appeals decided on 24.11.1997, in order to submit that the Chemical Analyser having not stated about the tests conducted, the accused was held entitled to acquittal. It is pointed out that the Chemical Analyser from the office of CFSL Hyderabad has not deposed about the tests, which he had conducted. It is submitted that the applicant has undergone imprisonment for a period of about five years and he may be released on bail on conditions as may deemed fit.

7. Shri Rivankar, the learned Public Prosecutor for the respondents, in all fairness, does not dispute that the Chemical Analyser from the office of CFSL Hyderabad has neither mentioned about the tests conducted in the Chemical Analyser's report nor in his evidence before the learned Sessions Judge.

8. I have carefully considered the circumstances and the submissions made. The Division Bench of this Court in the case of **Deen Khan Mohamad** (supra) has relied upon the earlier decision in the case of **Mr. Ilan Pierre Yan Wijnalda Vs. State** (Criminal Appeal No. 5/1997) decided on 5/6 November, 1997, in

which, in similar circumstances and in the absence of details of the experiments/tests/methods employed by the Chemical Analyser, it was found that the prosecution had failed to establish that the seized substance was contraband prohibited under the NDPS Act.

9. At this stage, it is neither necessary nor appropriate to go into the merits of matter. *Prima facie*, it can be seen that the officer from the office of CFSL Hyderabad has not set out the details of the tests conducted in the evidence recorded before the learned Sessions Judge. The applicant is in custody from 14.01.2014. It is a matter of record that the passport of the applicant has already been seized.

10. Considering the overall circumstances, the following order is passed:

ORDER

- (a) The application is allowed.
- (b) The substantive sentence of imprisonment awarded to the applicant, is hereby suspended, pending disposal of the appeal, on condition of the applicant furnishing a P.R. Bond in the sum of Rs.50,000/- with two solvent sureties in the sum of Rs.25,000/- each, out of which, atleast one, shall be a local surety and on condition of deposit of Rs.1 lakh as fine.

- (c) The applicant shall undertake to attend the Court as and when required and shall not leave the State of Goa without prior permission of this Court.
- (d) The applicant shall furnish his local address before the learned Special Judge alongwith proof.
- (e) Bail Bonds to be furnished before the learned Special Judge

C.V. BHADANG, J.

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