

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (BAIL) NO. 306 OF 2018**

**AKSHAT ANANT, PRESENTLY AT CENTRAL
JAIL, COLVALE, THR. ABHINAW
KUMAR.,**

... Applicant

Versus

**STATE OF GOA, THR. ANTI-NARCOTIC
CELL, PANAJI AND ANR.,**

... Respondents

Shri S. S. Kantak, Senior Advocate with Adv. Prabhat Kumar, Adv. Raviraj R. Chodankar, Adv. P. Rathod and Adv. P. Talaulikar for the Applicant.

Mr. Pravin N. Faldessai, Addl. Public Prosecutor for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 31st October 2018.

Oral Order:

This an application for bail.

2. The applicant has been arrested on 16/2/2018 by Anti Narcotic Cell Police Station, Panaji. The applicant had filed an application for bail before the learned Special Judge based on the judgment of the Hon'ble Supreme Court in the case of **Mohan Lal Vs. State of Punjab 2018 AIR SC 3853**. It is submitted that the complainant and the investigation officer in this case is the same and, as such, the prosecution would stand vitiated as held by the Hon'ble Supreme Court in the case of **Mohan Lal (supra)**.

3. The learned Special Judge by an order dated 3/10/2018 has dismissed the application inter alia on the ground that in the present case, the investigating officer had received information from a source upon which he conducted a raid. The learned Special Judge has found that the investigation officer is not the informant in the present case although he has filed a complaint against the applicant/accused. The learned Special Judge has further found that the charge is framed to which the applicant has pleaded not guilty and consequently evidence will have to be recorded. In short, according to the learned Special Judge the investigating officer not being the informant and secondly, it could not be said whether the investigating officer has carried out a biased investigation, the applicant is not entitled to bail.

4. I have heard Shri Kantak, the learned Senior Counsel for the applicant and Shri Faldessai, the learned Additional Public Prosecutor for the Respondent. Perused record.

5. Shri Kantak, the learned Senior Counsel has strenuously urged that the Hon'ble Supreme Court, in the case of **Mohan Lal (supra)** in no uncertain terms has held that where the complainant and the investigating officer are one and the same, the prosecution would stand vitiated on account of infraction of the constitutional guarantee of a fair investigation. It is

submitted that the 'informant' as appearing in para 25 of the judgment of the Supreme Court, would not be the 'source informant' or a private person giving information to the raiding officer. It is submitted that the learned Special Judge was in error in refusing to grant bail on the ground that the informant and the investigating officer are not the same in this case.

On behalf of the applicant reliance is placed on the decision of the Delhi High Court in the case of **Annabelle Analsita Malibago Vs. Dri in CRL.A.177/2016 decided on 25/10/2018.**, judgment of the Kerala High Court in the case of **Athul Soman Vs. The Excise Circle Inspector (2018) SCC Online Ker 2964 and Jayakumar A. J. Vs. The State of Kerala in Cri. MC.No.6067 of 2018 decided on 4/10/2018, Bineesh A. N. Vs. The Sub Inspector of Police Crl. MC No.6762 of 2018** and the decision of this Court in the case of **Rajkumar Vs. State of Maharashtra CRR no.78 of 2010.**

6. On the contrary Shri Faldessai, the learned Additional Public Prosecutor has placed reliance on the observations of the Hon'ble Supreme Court on para 25 of the judgment in order to submit that the informant and the investigating officer must not be the same person, which in the present case are not as has been rightly held by the learned Special Judge.

7. I have carefully considered the circumstances and the submissions made. The Hon'ble Supreme Court in the case of **Mohan Lal (supra)** has held thus in para 25 of the judgment:.

In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

(Emphasis supplied)

8. **Mohan Lal (supra)** was a case arising out of the provisions of the

NDPS Act where the applicant was allegedly found in possession of 4 kgs of opium and was convicted for the offence under section 18 of the NDPS Act. The Hon'ble Supreme Court has inter alia held that the complainant and the investigating officer cannot be the same more so in cases involving a reverse burden of proof.

9. Prima facie it cannot be accepted that the informant as appearing in para 25 of the judgment would be a person giving the information on the basis of which the raid is conducted. This is because such an informant who is a private person can never be the investigator. Thus there would be no occasion for such 'source informant', who is a private individual, being an investigator. In the present case the record discloses that the complainant/informant is PSI Mr. Rahul S. Naik who incidentally is also the Investigating Officer. In that view of the matter and in view of the law laid down by the Supreme Court in the case of **Mohan Lal (supra)** there is no option that to hold that in my considered view the applicant would be entitled to bail. Hence the following order is passed:

ORDER:

- (i) The application is allowed.
- (ii) The applicant shall be released on bail on execution of a P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties in

the sum of Rs.25,000/- each, at least one out of whom shall be a local surety.

(iii) The applicant shall file his native address along with proof before the learned Special Judge.

(iv) The applicant shall not tamper with the prosecution evidence or witnesses.

Authenticated copy of this order be issued to the parties.

C. V. BHADANG, J.

ap/-