

IN THE HIGH COURT OF BOMBAY AT GOA***CRIMINAL APPLICATION (MAIN) NO. 97 OF 2019***

State
as represented by the
Office-in-charge,
Anti Narcotic Police Station,
Panaji, Goa.

... Applicant.

Versus

Ms. Svetlana Federova,
D/o Nickolai Federova,
age 36 years, r/o H.No. W 45,
Poughatti City, Gorvogo Street,
Russia.

... Respondent

Mr. S.R.Rivankar, Public Prosecutor for the Applicant.

Mr. J. P. D'Souza, Advocate for the Respondent.

Coram : Prithviraj K. Chavan,J

Reserved on : 10.06.2019

Pronounced on: 21.06.2019

Order:

By this application under Section 439(2) read with 482 of Cr.P.C., the State of Goa has prayed for cancellation of bail granted to the respondent, a Russian citizen, by the impugned order dated 02.02.2019,

passed by the Addl. Sessions Judge, Mapusa in view of the law laid down by the Hon'ble Supreme Court in the case of **Mohan Lal Vs. The State of Punjab, reported in CDJ 2018 SC 842.**

2. At the outset, Shri Rivankar, the learned Public Prosecutor contended that while granting bail, the learned Addl. Sessions Judge failed to appreciate the bar under Section 37 of the NDPS Act. Admittedly, the respondent is being prosecuted by the Anti Narcotic Cell of Goa for an offence under Section 22(c), 20(b) (ii)(A) and Section 29 of the NDPS Act pursuant to an information received by the Anti Narcotic Cell on 08.12.2018. It is alleged by the prosecution that the respondent was found in possession of liquid LSD weighing about 15.130 gms. and charas during the house search, in a cupboard.

3. It is contended by Mr. Rivankar that PSI Mr. Manjunath Naik reduced the information into writing and informed Dy.S.P. of Anti Narcotic Cell, requesting him to issue a house search warrant in order to conduct a raid. It is submitted that pursuant to receiving the said warrant, PSI Mr. Manjunath Naik arranged for pancha witnesses who were part of the raiding party and conducted a raid at the house occupied by respondent. During search in the cupboard of which, the key was handed over by respondent, PSI Mr. Manjunath Naik found a packet containing brownish colour glass bottle having greenish and whitish colour dropper

cap. He also found auto press polythene packet containing black colour substance.

4. PSI Mr. Manjunath Naik took drop of the liquid from the bottle for drug testing and tested it through drug detection kit. It was found positive for LSD.

5. PSI Mr. Manjunath Naik attached the bottle containing suspected LSD liquid.

6. He also tested the contents of the auto press polythene packet which was found to be charas after testing. He arrested the respondent and thereafter lodged a complaint.

7. Though it is quite apparent from record that the substantial part of the investigation has been conducted by PSI Mr. Manjunath Naik, however, Mr. Rivankar submits that substantial part of the investigation was conducted by PSI Mr. Almeida who registered an FIR bearing No.29/2018 on 19.12.2018. The raid in question was conducted by PSI Mr. Manjunath Naik on 08.12.2018. It is the contention of Mr. Rivankar that PSI Mr. Manjunath Naik is not the investigating officer.

8. I am afraid, I cannot buy the arguments of Mr. Rivankar for the

reason that substantial part of the investigation appears to have been conducted by Mr. Manjunath Naik and not by PSI Mr. Almeida. Admittedly, it was PSI Mr. Manjunath Naik who had received the information about the alleged offence and therefore, the ratio laid down by the Hon'ble Supreme Court in the case of **Mohan Lal** (supra) would be clearly attracted in the given facts and circumstances.

9. It would be advantageous to refer and quote paras 14 and 25 of the said judgment which read thus:-

“14. In a criminal prosecution, there is an obligation case on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality . It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

25. 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 reverse burden of proof.”

10. The learned Counsel for the respondent Mr. J.P. D'Souza had supported the impugned order in view of **Mohan Lal** (Supra). In **Mohan Lal** (Supra), the Hon'ble Supreme Court had observed that the prosecution is held to be vitiated because of the infraction of constitutional guarantee of fair investigation. In a subsequent judgment in **Criminal Appeal Nos. 2450-2451 of 2010 in the case of Varinder Kumar Vs. State of Himachal Pradesh**, the Hon'ble Supreme Court observed thus:

“18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires

*balancing the rights of the accused and the prosecution, so that the law laid down in **Mohan Lal** (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in **Mohan Lal** (supra) shall continue to be governed by the individual facts of the case.”*

10. Here is the case wherein the Addl. Sessions Judge has merely granted bail to the respondents. For cancellation of bail, the prosecution has to make out a case as required by law. As such, I do not find any merit in the application by the State and as such, the same stands dismissed.

Prithviraj K. Chavan,J.

MF/-