

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (MAIN) NO.182 OF 2019**

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

.... Applicant

V/s

Mr. Caitan Fernandes

.... Respondent

Shri S.R. Rivankar, Public Prosecutor for the Applicant.
Shri J.P. D'Souza, Advocate for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 17th September, 2019

ORDER :

By this application under Section 439(2) read with Section 482 of Cr.P.C., the applicant/State has prayed for cancellation of impugned order of bail of the respondent granted by the Additional Sessions Judge on 02/02/2019.

2. A few facts germane for decision of this application can be summarised thus:

On 15/12/2018, an information was received by Police Sub-Inspector Sachin Narvekar that a male aged about 50 to 55 years,

medium built with wheatish complexion, wearing brown coloured jacket and orange coloured T-shirt and a grey coloured pant will deliver a narcotic drug to his prospective customer around 4 to 4.30 hours in front of the toilet behind Pavilion Shed of Vagator Football Ground, Anjuna, Bardez - Goa. Accordingly, PSI Sachin Narvekar reduced the said information in writing and, *inter alia*, addressed a letter to the Dy. SP (ANC) namely Shri Sammy Tavares.

4. PSI Sachin Narvekar arranged for two panchas for the purpose of conducting raid. He briefed the panchas about the raid to be conducted pursuant to the information. He collected necessary articles required for the raid, i.e. investigation kit box and drug detection kit. Thereafter, Shri Sachin Narvekar along with the members of the raiding party proceeded to the said spot and nabbed the suspect namely the respondent. After confirming his identity, during search, the Sub-Inspector had found a transparent auto press polythene packet containing a sheet of perforated paper suspected to be LSD. Those were 32 pieces of paper which were seized in the presence of panchas. PSI Sachin Narvekar had also tested the said contraband with the help of detection kit which gave positive result

for LSD. He also weighed the papers which were found to be 0.811 gms. The narcotics were seized and thereafter he lodged a complaint.

4. It is the contention of Shri Rivankar that PSI Sachin Narvekar is the complainant and not the Investigating Officer in this case. According to him, one Shri Rohan Nageshkar is the Investigating Officer and, therefore, the learned Trial Court committed an error in law in releasing the respondent on bail by wrongly placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Mohan Lal V/s. State of Punjab*¹. However, Shri Rivankar fairly submits that since this Court has taken a view in the case of *State V/s. Ms. Svetlana Federova* in *Criminal Application (Main) No.97 of 2019*, the present application can be disposed of on the basis of the said view taken by this Court.

5. Shri J.P. D'Souza, the learned Counsel for the respondent is also in agreement with Shri Rivankar in so far as the view taken by this Court in the case of *Svetlana* (supra) is concerned.

6. It can be seen that substantial part of the investigation has

¹ CDJ 2018 SC 842

been carried out by PSI Sachin Narvekar, who himself is the complainant in this case and, therefore, the ratio laid down by the Supreme Court in the case of **Mohan Lal** (supra) would be clearly attracted. It would be advantageous to refer paras 14 and 25 of the judgment which read thus:

“14. In a criminal prosecution, there is an obligation cast 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 a reverse burden of proof.”

7. In view of the aforesaid ratio, as a matter of fact, the prosecution is vitiated because of the infraction of the constitutional guarantee of fair investigation.

8. In a subsequent judgment in ***Criminal Appeal Nos.2450-2451 of 2010*** in the case of ***Varinder Kumar V/s. State of Himachal Pradesh***, it is 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.”

8. The learned Additional Sessions Judge by the impugned order released the respondent on bail. For cancellation of bail the prosecution has to make out a case as required by law.

9. I, therefore, do not find any merit in the application and the same stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

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