

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 176 OF 2019.

Mr. Ramjan Sharif Shaikh,
Son of Mr. Allabakash Shaikh,
32 years old, married, service,
Resident of House No. 192,
Indira Nagar, Chimbhel, Panaji,
Goa, and presently
resident of House No.346,
Adcolna, Bhoma, Ponda, Goa,
presently in Judicial Custody,
Colvale Central Jail, Colvale Goa,
Through next friend Ms. Momtaj
Bi Din, daughter of Mr. Mohammad Din,
45 years old, resident of House No.283,
Govt. Quarters, St. Inez,
Panaji, Goa - 403001.

... Applicant.

Versus

1. State of Goa,
As represented by Officer in Charge,
Through P. I. Anti Narcotic Police
Station,
Panaji – Goa.

2. The Public Prosecutor,
High Court,
Panaji, Goa.

... Respondents

Mr. Vadraj Toraskar, Advocate for the Applicant.

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

Coram : Prithviraj K. Chavan,J.

Reserved on : 24th July 2019.

Pronounced on : 29th July 2019.

ORDER:

This is an application for bail under Section 439 Cr.P.C.

2. The applicant was found in possession of 15 grams of suspected MDMA and 200 grams of Ganja in commercial quantity on 21.07.2018. A crime was registered bearing No. 15/2018 under Section 22(C) & 20(b)(ii)(A) of NDPS Act by the respondent.
3. An application for bail filed by the applicant before the Addl. Sessions Judge, came to be rejected on 25.01.2019.
4. It is contended on behalf of the applicant that he has been falsely implicated in this case. He is a young man of 32 years with 50%

disability. It is submitted that he is the only earning member of the family and has roots in the society. In case of his release, he will not abscond and will abide by the terms and conditions.

5. It is submitted that there is no material on record to show that the applicant was involved or was found in possession of any contraband substance. It is also submitted that there is a contravention of the mandatory provision of Section 50 of the NDPS Act by not serving a mandatory notice to the persons who are intercepted, thereby vitiating the entire prosecution.

6. The learned Counsel submits that the investigation has already been completed and a charge sheet has been filed. There is no question of tampering with any kind of evidence or influencing any witnesses, in view of filing of the charge sheet.

7. Due to his 50% disability, the applicant has been facing considerable difficulty in terms of his daily routine in the jail premises and is likely to have serious health issues. His indefinite incarceration would result in miscarriage of justice.

8. It is contended that the applicant has a strong case on merits and

there is a likelihood of is acquittal.

9. On the other hand, the learned Public Prosecutor has strongly opposed the application by filing reply dated 24.07.2019. It is submitted that the applicant was caught red handed with 200 grams of Ganja and 15 grams of MDMA approximately worth Rs.80,000/- and was attached under panchanama alongwith a mobile phone. He was arrested on 22.07.2018.

10. The narcotic substance namely 15 grams of MDMA and 200 grams of Ganja found in the possession of the applicant has been sent for chemical analysis to CFSL Hyderabad. The 15 grams of MDMA found in possession of the applicant is of commercial quantity and therefore, rigors of Section 37 of the NDPS Act are applicable.

11. The learned Public Prosecutor submits that the charge sheet has already been filed on 15.01.2019. However, if the applicant is released on bail, he will threaten the witnesses and there is every possibility of jumping the bail.

12. It is submitted that the applicant is an unemployed with no source of income. If released, he would continue in drug dealing and

peddling activities. He, therefore, prayed for rejection of the bail application.

13. No doubt, the MDMA alleged to have been found in possession of the applicant is a commercial quantity and therefore, as per Section 37 of the NDPS Act, an opportunity must be given to the Public Prosecutor to oppose the application for such release, in the light of the fact that Section 22(C) of the Act contemplates punishment to the extent of 20 years and fine to the extent of Rs.2,00,000/- where the contravention involves commercial quantity.

14. Merely because the applicant is 50% handicapped would not be a sufficient ground to release him on bail, in view of the fact that firstly, there is no authentic document or certificate of a Civil Surgeon indicating 50% disability of the applicant. What has been brought to my notice is just a photostat copy of a photograph of the applicant which does not indicate anything about his disability. It is also pertinent to note that as per the prosecution, he is unemployed with no source of income. In such an eventuality, the possibility of applicant indulging in similar offence in case of his release on bail, cannot be totally ruled out.

15. There is nothing on record by which it can be said that there are some reasonable grounds for believing that the applicant is not guilty of the offences with which he has been chargesheeted. It is difficult to say that in case of his release, he would not repeat similar offences.

16. The learned Addl. Sessions Judge has therefore, rightly observed that Section 37(1) of the NDPS Act begins with a non obstante clause indicating notwithstanding anything contained in the Code of Criminal Procedure, 1973. Nevertheless, Section 439 Cr.P.C. Empowers the High Court to exercise its special powers regarding bail if the conditions therein are otherwise satisfied.

17. The learned Public Prosecutor drew my attention to Section 54 of the NDPS Act which contemplates presumption from possession of illicit articles that unless and until contrary is proved it is to be presumed that the accused has committed an offence under this Act. Section 35 provides for presumption of culpable mental state. He submits that the applicant was found in conscious possession of the contraband in commercial quantity.

18. Thus, in the light of the aforesaid facts and circumstances, it

would be unsafe to release the applicant on bail. The application is devoid of substance and hence stands rejected.

PRITHVIRAJ K. CHAVAN, J.