

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (MAIN) NOS.7 & 8 OF 2019****CRIMINAL APPLICATION (MAIN) NO.7 OF 2019**

State through its
Police Inspector/
Investigation Officer,
Panaji-Goa.

... Applicant

V/s.

Santosh Naik,
Mapusa Bardez, Goa.

... Respondent

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

AND

CRIMINAL APPLICATION (MAIN) NO.8 OF 2019

State through its
Police Inspector/
Investigation Officer,
Panaji-Goa.

... Applicant

V/s.

Miss Chaitali Naik & Anr.

... Respondents

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

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on :- 31st July, 2019

Pronounced on :- 8th August, 2019

ORDER :

Respondents no.1 & 2 in Criminal Application (Main)

No.8 of 2019 and the respondent in Criminal Application (Main) No.7 of 2019 have been booked by the applicant in Criminal Case No.7/2018 under Sections 20(C), 20(b)(ii)(B) and 29 of the NDPS Act, 1985 and, therefore, these applications are being disposed of by a common order.

2. The State has challenged the impugned orders dated 12/06/2018 and 15/05/2018 by which the learned Additional Sessions Judge released the respondents on bail by imposing certain conditions. The applicant has prayed for cancellation of bail of the respondents under Section 439(2) read with Section 482 of the Criminal Procedure Code.

3. Shorn of unnecessary details, the only point raised by the applicant is that whether pursuant to a report of CFSL dated 23/03/2018 received by the applicant after it sought clarification from the expert about the substance which according to the expert is that N-Methyl-3, 4-Methylene dioxyamphetamine is a common name for MDMA and that the chemical name mentioned in the examination report and the chemical name stated as ($\pm$)N, alpha – dimethyl-3, 4-

(methylene-dioxy) are synonyms of MDMA, would justify release of respondents herein on bail?

4. Heard Shri Rivankar, the learned Public Prosecutor and Shri J. P. D'Souza, the learned Counsel for the respondents.

5. During a raid on 15/08/2017, in the presence of panchas at Yogeeta General Store, Samata Nagar, Sattinganwado, Khorlim, Mapusa, Bardez-Goa, the respondents were found in possession of 12.100 gms of suspected ganja and 20 gms of suspected MDMA along with other articles.

6. As per the chemical analysis report dated 26/10/2017, it was N-Methyl-3, 4-Methylenedioxyamphetamine (MDMA).

7. Respondents moved an application for bail before the Sessions Judge on 28/05/2018. After hearing the respective sides, the learned Judge granted the respondents bail on the ground that the contraband drug MDMA recovered from the respondents is not described in the schedule or in the table appended to the NDPS Act.

What has weighed with the learned Additional Sessions Judge is serial no.134 and 138 of the table appended to NDPS Act, which gives international non-proprietary name, other non-proprietary name and chemical name for each of the drugs covered by the Act. The learned Judge observed that reference to MDMA at serial no.134 and 138 is as follows:

Serial No.	International non Proprietary name	Other non Proprietary name	Chemical name
134		MDMA, Ecstasy	(+)-N, alpha -dimethyl -3-4- (methylenedioxy) Phenethylamine
138			2-methoxy-alpha- methyl-4, 5- (methylenedioxy) phenethylamine

8. It is, therefore, held by the learned Additional Sessions Judge that the substance analysed given as N-Methyl-3, 4-Methylene dioxyamphetamine is nowhere described either in the schedule or in the table appended to the NDPS Act. It is observed that since punishments provided under the Act are of severe nature, it is necessary that the substance alleged to be found on the person of the accused should conform with the chemical names or the chemical contents of the substance as described in the schedule or table

appended to the Act. It is also observed that though the expert has stated that the aforesaid chemical name is “common name for MDMA” and the said chemical content is a synonym of MDMA, it is observed that the Court has to take into consideration only the chemical name of MDMA which is mentioned in the NDPS Act and not which is mentioned by the expert.

9. Shri Rivankar has placed reliance on a judgment of this Court in case of *State, through its Police Inspector/Investigation Officer, ANC Police Station, Panaji V/s. Paul William D'Souza & Anr. (Criminal Application (Main) No.3 of 2019)* wherein on the similar premise this Court (Nutan D. Sardesai, J.) cancelled the bail of the respondents directing them to surrender to the custody of the Additional Sessions Judge, Mapusa within four weeks. It is submitted that SLP preferred by the respondents came to be dismissed.

10. Shri D'Souza, the learned Counsel for the respondents, at first, tried to distinguish the order of this Court in case of *Paul William D'Souza* (supra) stating as to what has been held by the learned Single Judge of this Court is not the ratio decidendi and,

therefore, would not be applicable to the present case. He drew my attention to paras 16, 17 & 18 of the judgment of the Supreme Court in case of *Laxmi Devi V/s. State of Bihar & Ors.*¹, which read as under :

“16. Since heavy reliance has been placed by the State on Satendra Prasad Jain V/s. State of U.P. MANU/SC/0392/1998 : (1993) 4 SCC 369 and Lt. Governor of Himachal Pradesh V/s. Avinash Sharma MANU/SC/0417/1970 : (1970) 2 SCC 149, we must sedulously determine their ratios. This would therefore be the apposite time and place for a brief discussion on the contours and connotations of the term ratio decidendi, which in Latin means “the reason for deciding”. According to Glanville Williams in ‘Learning the Law’, this maxim “is slightly ambiguous. It may mean either (1) rule that the judge who decided the case intended to lay down and apply to the facts, or (2) the rule that a later Court concedes him to have had the power to lay down.” In G.W. Patons’ Jurisprudence, ratio decidendi has been conceptualised in a novel manner, in that these words are “almost always used in contradistinction to obiter dictum. An obiter dictum, of course, is always something said by a Judge. It is frequently easier to show that something said in a Judgment is obiter and has no binding authority. Clearly something said by a Judge about the law in his judgment, which is not part of the course of reasoning leading to the decision of some question or issue presented to him for resolution, has no binding authority however persuasive it may be, and it will be described as an obiter dictum.” ‘Precedents in English Law’ by Rupert Cross and JW Harris states - “First, it is necessary to determine all the facts of the case as seen by the Judge; secondly, it is necessary to discover which of those facts were treated as material by the

¹ AIR 2015 SC 2710

Judge.” Black’s Law Dictionary, in somewhat similar vein to the foregoing, bisects this concept, firstly, as the principle or rule of law on which a Court’s decision is founded and secondly, the rule of law on which a latter Court thinks that a previous Court founded its decision; a general rule without which a case must have been decided otherwise.

*17. A Constitution Bench has also reflected on the true nature of ratio decidendi in **Krishena Kumar V/s. Union of India MANU/SC/0317/1990 : 1990 (4) SCC 207**, as is discernable from the following passages:*

19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain “propositions wider than the case itself required”. This was what Lord Selborne said in Caledonian Railway Co. v. Walker’s Trustees and Lord Halsbury in Quinn v. Leathem. Sir Frederick Pollock has also said : “Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.”

20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound

by it.

*18 The following paragraph from the determination of the Three-Judge Bench in **Sanjay Singh V/s. U.P. Public Service Commission, Allahabad MANU/SC/0563/2007 : 2007 (3) SCC 720**, is instructive and is reproduced for this reason -*

10. The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and

(iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent...”

11. The learned Counsel drew my attention to the result of the examination of the CFSL, Hyderabad dated 26/10/2017 which indicates that, after analysis, expert concluded that it was N-Methyl-3, 4-Methylene dioxyamphetamine. After seeking clarification, the same expert by his communication dated 23/03/2018 opined about the synonyms of MDMA as referred herein above.

12. This Court in case of ***Paul William D'Souza*** (supra) at para 9 observed thus:

“9. Last but not the least it is borne out from the report of the scientific officers on examination of the samples forwarded for examination and that issuing the clarification that the substance with both the respondents was MDMA as per item No.134 of the table to the Act and qualifying as commercial quantity. In such circumstances, therefore the respondents would not be entitled to the benefit of bail when the substance purportedly found with them was commercial quantity of the prohibited psychotropic substance MDMA. In these circumstances, there is merit in the application of the State for the cancellation of bail which is accordingly allowed and the bail earlier granted to the respondents stands withdrawn. The respondents shall surrender to the custody of the Additional Sessions Judge, Mapusa within four weeks from today.”

13. Thus, the view taken by this Court in case of ***Paul William D'Souza*** (supra) will have to be accepted.

14. It is the requirement of the judicial discipline to accept and follow a verdict of co-ordinate Bench and even larger Benches.

15. In case of ***Laxmi Devi*** (supra), the Supreme Court has described the contours and connotations of the term ratio decidendi which means the reasons for deciding. This Court in ***Paul William***

D'Souza (supra) has assigned reasons for the decision. In view of the doctrine of precedent a previous decision is limited to the decision itself and what is necessarily involved in it. The judgment in **Paul William D'Souza** (supra) is based on similar facts. Thus, the ratio decidendi of the said decision will have to be made applicable to the present set of facts.

16. Shri D'Souza has placed reliance on a judgment of **Shahid Khan V/s. Director of Revenue Intelligence**². The issue before the Single Judge was whether the prosecution failed to establish that the accused appellant was in possession of any psychotropic substance within the provisions of Section 2 (xxiii) of NDPS Act. It was an appeal against conviction. After analysing the entire evidence, the High Court of Andhra Pradesh had allowed the appeal acquitting the appellant therein. The ratio would not be applicable as in the instant case the investigation is at a stage of filing charge sheet. The question as to whether the narcotic substances seized from the possession of the respondents are really MDMA or otherwise can be determined during the trial.

² 2001 CriLJ 3183

17. Suffice it to say that in view of the report dated 23/03/2018 issued by the same scientific officer, prima facie, it can be said to be MDMA which was found in commercial quantity.

18. Thus, the prayer in respective applications needs to be granted.

19. The impugned orders dated 15/05/2018 and 12/06/2018 granting bail to the respondents are quashed and set aside. The bail granted to the respondents stands cancelled.

20. The sureties are discharged.

21. The respondents shall surrender before the Additional Sessions Judge, Mapusa within four weeks from today. In the above terms, both the applications stand disposed of.

PRITHVIRAJ K. CHAVAN, J.

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