

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL APPLICATION (BAIL) NO. 266 OF 2019.

IBE CHUKE EBONY,
PRESENTLY LODGED AT
MODERN JAIL COLVALE.,

... Applicant.

Versus

STATE OF GOA, AS REP. BY
OFFICER-IN-CHARGE, CRIME
BRANCH AND ANR.

... Respondents.

Mr. J. P. D'Souza and Ms. C. Collasso, Advocates for the applicant.
Mr. P. Faldessai, Additional Public Prosecutor for the respondents.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Reserved on:-21st November 2019.
Pronounced on:28th November 2019.

ORDER

The applicant who is a Nigerian national seeks his release on bail who has been arrested by the respondent no.1 on 21.9.2019 from Candolim for having found in possession of 83 grams of cocaine.

2. FIR bearing No.99/2019 under Section 21(b) of the NDPS Act came to be registered against the applicant.

3. Brief facts are as under:-

The applicant was caught red handed by the respondent no.1 with suspected cocaine weighing about 83 grams in a polythene packet. Said contraband has been attached under search and seizure panchanama. The applicant is under interrogation by the police to find out the source of the drug. It is the contention of Mr. J. D'Souza that the applicant is residing at Flat No.D-2, Alcon Const(G) Pvt. Ltd Aldeia, Below Hotel, Khobravaddo, Calangute, Bardez Goa. The owner of the said flat has furnished form "C" intimating the FRRO about the residence of the applicant in the said flat.

4. It is further submitted that though the applicant was earlier arrested by the officer of Calangute Police Station on 24.12.2017 in FIR No.110/2007 for possession of 7.5 gms of cocaine, matter is pending before Special Court, Mapusa. It is contended that the applicant has not been convicted under any law including that of NDPS Act. The applicant has been attending the hearing of the case regularly for the last 8 years and staying in India due to the said trial. It is further submitted by Mr. J.

D'Souza, that the applicant lives with a Russian lady who pays for his day to day expenses at the rate of ₹300/- dollars per month. They have two children. This was informed to the Court pursuant to a query and therefore, it find no mention in the application.

5. Mr. J. D'Souza, further submits that the applicant has been refused bail by the trial Court only on the ground that he is a foreign national. The investigation is still in progress. It is submitted that what has been found with the applicant is an intermediate or a variable quantity and, therefore, bar under Section 37 of the Act would not apply to resist the application.

6. On the other hand, Mr. P. Faldessai, learned Additional Public Prosecutor objected the release of the applicant on bail on the ground that applicant does not possess a valid travel document.

7. He drew my attention to the judgment of the Division Bench of this Court in *Suo Motu Writ Petition No.1 of 2019* wherein it has

been observed in paragraph 16 that a majority of the cases concerned Nigerian nationals followed perhaps by Tanzanian and Russian nationals. Learned Additional Public Prosecutor drew my attention to the observation made in paragraphs 23 of the judgment.

8. It is true to some extent that some of the foreign nationals, in order to extend their stay in India, without proper travel documents or beyond the period permitted by the visa granted to them, indulge in petty offences only, so that they may not be deported from India. It is true that at the time of granting bail to foreign nationals one of the conditions which is normally imposed is that foreign national shall not leave the country till the trial is concluded. Some of the foreign nationals might be taking undue advantage of this fact. In that regard the Division Bench in the aforesaid Suo Motu Writ Petition made following observations in paragraphs 26 to 29 which read thus:-

26. According to us, in such cases, the State/Prosecution can also make applications before the Magistrate/Courts where such matters are pending to expedite the matters by clearly pointing out the circumstances of overstay and apprehension that the involvement in petty offences is perhaps to facilitate

such overstay. The Magistrate/Courts before whom such cases are pending should, as observed in Christian Chidieere Chukwu (supra) must endeavour to dispose off such cases expeditiously otherwise it would amount to facilitating such foreign nationals to stay in India even though they may not have proper travel documents or their visa period may have already expired. In short, this would virtually facilitate such foreign nationals from defeating the provisions of the Foreigners Act, 1946, rules and orders made thereunder. No doubt, this cannot be the approach when the foreign nationals are found to be involved in serious offences say under N.D.P. S. Act, cyber fraud, rape etc. We make it clear that this list is by no means exhaustive. Such matters will have to be considered on a case to case basis.

27. Although, it may neither be possible nor advisable to issue any specific directions in the aforesaid regard, some observations, are certainly in order. Since, the State is itself conscious that some foreign nationals, at times, deliberately involve themselves in petty offences, only in order to facilitate their overstay in India or otherwise defeat the provisions of the Foreigners Act, 1946, rules and orders made thereunder, we can only say that the State/Prosecution, in such cases, must either seek expedition of such matters by filing appropriate application before the Magistrate or Courts where such matters are pending or even consider whether withdrawal from the prosecution is a better option. In either cases, however, all arrangements must be made to forthwith deport such foreign nationals who are found to have no proper travel documents or whose visa term had already expired, no sooner such matters are disposed off by the Magistrate or Courts.

28. The Magistrate and Courts must also take cognizance

of the 28 subterfuges employed by some foreign nationals to secure bail and thereafter delay the matters, only to facilitate their overstay or otherwise defeat the provisions of the Foreigners Act, 1946, rules or orders made thereunder. As noted earlier, it may neither be possible nor feasible to issue any specific directions in this regard since these matters will have to be essentially dealt with on a case to case basis by both, State/Prosecution as well as the Magistrate/Courts. All that we emphasize, is that both State/Prosecution as well as the Magistrate/Courts must be conscious of such issues and accordingly take necessary steps to see that the process of the Court is not abused to defeat the provisions of the Foreigners Act, 1946, rules and orders made thereunder.

29. *Accordingly, we direct the State/Prosecution to specifically bring these aspects to the notice of the Magistrate/Courts in pending matters involving the foreign nationals who have no valid travel documents or who have overstayed by the visa term, by, if necessary, filing specific applications and furnishing all details. We also direct the Magistrate/Courts to take cognizance of such aspects, particularly at the stage of consideration of bail applications made by such foreign nationals."*

9. It can be seen from the reply of the State as well as from the averments in the application that the investigation is still in progress. It is further apparent from the reply that the applicant has already surrendered his passport before NDPS Court Mapusa and, therefore, there is no possibility of the applicant fleeing away from justice,

however, fact remains that he has not applied to the competent authority for extension of his visa and also for extension of passport. It transpires from the record that what has been found in the possession of the applicant is variable quantity of 83 grams of cocaine as such, bar under Section 37 of the Act would not apply to resist the application.

10. Learned Counsel for the applicant has placed reliance on the following few orders passed by this Court:-

1. Mr. Ishwarlal Roka Vs State of Goa in Criminal Misc. Application No.70 of 2005.

2. Mr. Otto Jorge More Salazar Vs State of Goa in Criminal Misc. Application No.234 of 2005.

3. Mr. Felix Hiewhe Okorio Vs State in Criminal Misc. Application (Bail) No.227 of 2006.

4. Mr. Sunday Kamah Onyemaechi Vs State of Goa in Criminal Application (Bail) No.223 of 2017.

5. Mr. Arun Babu Sigata Vs Sate and another Criminal Application (Bail) No.33 of 2018.

11. In almost all the cases herein above the applicants were

released on bail either it was a case of variable quantity of the contraband or there was no material sufficient enough to deny the bail to the applicant.

12. Since the applicant has fixed place of stay, as submitted by him in the cause title of the application which has further been fortified with the fact that he is residing with a Russian women having two children, there would not be any difficulty to grant him bail by putting conditions. It is not the case of the prosecution that in the earlier matter pending against him in the NDPS Court Mapusa bearing No.6/2011, the applicant had made any attempt to jump the bail and, therefore, merely because he is a Nigerian national there is no reason to deny him bail. What is important to be considered while dealing with the application for bail is whether the presence of the applicant could be secured during the trial or whether he would be in a position to influence the prosecution witnesses. If the applicant is regularly attending the trial before the NDPS Court Mapusa since last 10 years, there is no reason for not granting the bail in the light of the aforesaid circumstances. Thus, for the

foregoing reasons the applicant could be admitted to bail on the following conditions. Now to the order:-

ORDER

- i. Application is allowed.
- ii. Applicant be released on bail in crime No.99/2019 on execution of personal recognition bond in the sum of ₹1,00,000/-(Rupees one lakh only) with one local surety in the like amount to the satisfaction of the trial Court.
- iii. Applicant shall report/attend office of respondent no.1 on every Monday between 10.00 am to 1.00p.m till filing of the chargesheet.
- iv. Applicant shall surrender his passport before the respondent no.1, if not already submitted before any other authority.
- v. Applicant shall not leave the jurisdiction of Special Court, Mapusa without seeking prior permission.

- vi. Applicant shall furnish his mobile number, if any, to the Investigating Officer.
- vii. Applicant shall not either directly or indirectly influence any of the prosecution witnesses.
- viii. Bail before the Special Court at Mapusa.

13. Application stands disposed off.

14. All concerned to act on the basis of duly authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

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