

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.316 OF 2019

Alex Thomba	.. Applicant
<i>Vs.</i>	
Mukesh Kumar & Anr.	.. Respondents

.....

Mr.A.K. Sahu, Advocate for the Applicant.
Mr.Jitendra Mishra, Advocate for Respondent No.1.
Mr.S.H. Yadav, APP for the Respondent No.2-State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 17, 2019.

P.C. :

This is an application for modification of the conditions imposed in order dated 21st June, 2016, passed by the Additional Sessions Judge, Pune. While granting bail to the Applicant in C.R.No.04 of 2019 of Narcotic Cell of Custom, Pune, for the offences punishable under Sections 8(c), 21m 29(1) of N.D.P.s. Act.

2 The prosecution case is that the applicant was found in possession of 38 grams of Cocaine, which is a non commercial quantity. The learned Sessions Judge granted bail on the ground

that the seized quantity of Cocaine is 38 grams. It is less than commercial quantity and Section 37 of N.D.P.S. Act is not applicable. However, while granting bail and considering the fact that applicant is an foreign national, in addition to other conditions, he was directed to produce the certificate of assurance from Embassy/High Commission of Nigeria that he shall not leave India and shall appear before this Court as and when required. Filing of such certificate by the accused was condition precedent for his release on bail.

3 Learned counsel for the Applicant submitted that the applicant's wife had made several attempts to get certificate referred to in the order dated 21st June, 2019 passed by the Additional Sessions Judge, Pune, however, the Embassy has not given such certificate. It is further submitted that the Passport of the applicant is in custody of Narcotic Cell of Customs, Pune. The letter dated 7th December, 2019 issued by the Inspector, Narcotic Cell, Pune, has been tendered by the counsel for the applicant. The same is taken on record and marked "**X**" for identification. In the letter it is mentioned that the Passport of applicant is valid upto 11th March, 2020 is deposited by applicant's wife is acknowledged on 7th December, 2019. The issuance of letter and

fact that Passport is with Narcotic Cell is not disputed by the learned counsel for the respondents. It is pertinent to note that the applicant is in custody from 7th April, 2019. He was directed to be released on bail by order dated 21st June, 2019. For want of producing the certificate stipulated in clause 5 of the operative part of the order dated 21st June, 2019, the Applicant had continued to be in custody.

4 It is also noted that the Passport of the applicant is in custody of Narcotic Cell of Customs, Pune. Thus, there is sufficient safeguard to secure the presence of the applicant. The trial Court while granting bail had directed that the Passport issued in the name of the accused shall be impounded and Embassy/High Commission of Nigeria shall be informed about that.

5 In these circumstances, the condition no.5 stipulated in order dated 21st June, 2016, passed by the Additional Sessions Judge, Pune, granting bail to the applicant in N.D.P.S. C.R.No.04 of 2019 stands relaxed. In addition to the condition imposed by the Sessions Court while granting bail the Applicant shall report to Narcotic Cell of Customs, Pune, once in a month on first

Monday of every month between 10:00 a.m. to 01:00 p.m., till conclusion of the trial. The applicant shall also appear before the trial Court regularly on every date of hearing unless exempted by the Court.

6 Application stands disposed of.

(PRAKASH D. NAIK, J.)