

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 6 OF 2020

MONDAY FELIX ODEDE, PRESENTLY
LODGED, AT COLVALE MODERN JAIL,
COLVALE

... Applicant

Versus

STATE, THR. THE POLICE
INSP. OFFICER IN CHARGE, ANTI
NARCOTIC CELL POLICE STATION,
PANAJI AND ANR.

... Respondents

Shri Kamlakant Poulekar, Advocate for the applicant.

Shri P. Faldessai, Additional Public Prosecutor for the
respondent - State.

Coram:- NUTAN D. SARDESSAI, J.

Date :- 23rd January, 2020

P.C.:

Reply filed.

2. Heard Shri K. Poulekar, learned Advocate for the
applicant and Shri P. Faldessai, learned Additional Public
Prosecutor for the respondent- State.

3. Shri K. Poulekar, learned Advocate for the applicant submitted at the outset that the charge sheet was not filed till the date of filing of the bail application and on that count alone the applicant was entitled to bail by default. Even otherwise it was his contention that the quantity of Cocaine and MDMA found with the applicant were 6.635 grams and 8.542 grams, both variable quantity entailing punishable up to 10 years. Such being the position and the quantities of the two narcotic substances being variable quantities, he was entitled to the benefit of bail and the rigors of Section 37 of the N.D.P.S.1985 Act did not apply.

4. Shri Phaldesai, learned Additional Public Prosecutor submitted that the charge sheet had been filed in the case on 22/01/2020 i.e. within 90 days period and therefore the applicant was not entitled to the benefit of bail by default. To that extent it had been negated. On the other aspect he conceded that the quantity of both the substances were variable and the rigors of Section 37 of the Act would apply.

5. i have considered the submissions of Shri Poulekar, learned Advocate for the applicant that the applicant is entitled to bail by default on account of filing of the charge sheet beyond the period of 60 days. Looking to the scheme of the Act and the provisions of Section 167 CrPC, the offences being punishable with imprisonment extending upto 10 years and necessitating the filing of the charge sheet within a period of 60 days which is not the position in the present case and therefore on that count alone the applicant is entitled to bail by default. Even otherwise, the quantities found with him are variable in nature which entail punishment extending upto 10 years to which the rigors of Section 37 of the Act are not applicable. In these circumstances, the applicant is entitled to bail. However, considering that the applicant is a foreign national strict rigors are required to be imposed to ensure that he does not defeat the purpose of his release on bail. In the result, therefore i allow the application on the following terms:

1. The applicant shall be enlarged on bail on executing bail bonds in the amount of ₹1,00,000/- (Rupees One Lakh only) and furnishing one local surety in co-extensive amount to the satisfaction of the learned Additional Sessions Judge, Mapusa.
2. He shall co-operate during the course of the trial and ensure his presence on all the dates of hearing.
3. He shall furnish his local address to the Investigating Officer and also to the Court of the learned Additional Sessions Judge, Mapusa.
4. The applicant to deposit his original passport within one week with the Investigating Officer.
5. He shall not tamper with the witnesses, intimidate the witnesses or hamper the course of the trial in any manner whatsoever.

6. The applicant shall also not leave the territorial waters of India without the prior written permission of the learned Additional Sessions Judge, Mapusa.

6. In these terms the application stands disposed off.

NUTAN D. SARDESSAI, J.