

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL BAIL APPLICATION NO.60 OF 2020

Shri Shanob K.H. ... Applicant

v/s.

State and another ... Respondents.

Shri E. Heredia, Advocate for the applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the respondents.

Coram : NUTAN D. SARDESSAI,J.

Date: 13th March,2020.

ORDER:

The applicant seeks his release on bail by invoking the jurisdiction of this Court under Section 439 Cr.P.C.

2. Heard Shri E. Heredia, learned Advocate for the appellant who contended that the appellant was travelling as a pillion on the scooter driven by his friend who also hailed from Kerala and was earlier known to him. They were detained and during the course of the search of the

dicky 0.89 gms LSD was seized which was admittedly a commercial quantity in respect of LSD. It was his contention that no laboratory test was conducted on the said substance till date which was required to be done within 30 days as per the Rules and there was no report as yet from the laboratory. The appellant was in custody without any basis for more than 86 days and therefore his incarceration in custody was illegal. He placed reliance in **Surinder Kumar Khanna v/s. Intelligence Office Directorate of Revenue Intelligence** [Criminal Appeal No.949 of 2019] in support of his case. It was his further contention that he was unaware of the antecedents of the rider and knew him only being from Kerala. The rigors of Section 37 of the NDPS Act were not attracted to the case nor the statement of the Goa police which was used against the appellant and pressed for his release on bail.

3. Shri Pravin Faldessai, learned Addl. Public Prosecutor on behalf of the State submitted at the outset that the judgment in **Surinder Kumar Khanna**(supra) was clearly

distinguishable. It was his contention that the appellant was caught redhanded and the recovery made and it was not a case where the appellant was placed under arrest only on the basis of the statement of the co-accused alone and hence the judgment in **Surinder Kumar Khanna**(supra) was clearly distinguishable. It was also his contention that the judgment was distinguishable where there was a delay of more than six months wherein in the present case more than 90 days had passed since the time of his arrest. The appellant was found in possession of 0.89 gms LSD and therefore, he was not entitled to the benefit of bail.

4. i would consider the submissions, the judgment relied upon and decide the application appropriately.

5. At the outset, the quantity allegedly found in the possession of the appellant was 0.89 gms LSD which was a commercial quantity to which the rigors of Section 37 of the Act would apply without demur. His contention that no laboratory test has been done till date will not apply

inasmuch as the period for filing the chargesheet in the case involving commercial quantity is 180 days and the plea on behalf of the appellant that he is in custody for 86 days would not stand the test of scrutiny. The plea that he was unaware of the antecedents of the rider and knew that he was only from Kerala is a fact which would have to be dealt with on merits of the case and not at the stage of deciding the bail application. The fact is that he was found alongwith the co-accused while travelling together on the scooter and was found in possession of 0.89 gms LSD which was a commercial quantity. The judgment in **Surinder Kumar Khanna**(supra) is clearly distinguishable wherein it was observed that the very manner in which the search and seizure was carried out and the prosecution seeking to make out its case and the quantity seized was LSD and consisted of commercial quantity was found wanting, such is not a case presently.

6. The judgment in **Surinder Kumar Khanna**(supra) is also clearly distinguishable inasmuch as in the facts of

the case it was the statement of the co-accused alone which was the basis for considering the involvement of the appellant in the crime and where it was held that apart from the statement of the co-accused there was no material in suggesting the involvement of the appellant in the crime. In the instant case the appellant has been caught redhanded on a public way while he was travelling with the co-accused on the scooter as a pillion and was found in possession of 0.89 gms LSD which is a commercial quantity. The other contention of Shri E. Heredia, learned Counsel that the rigors of Section 37 of the Act would not be attracted in this case also cannot hold in his favour inasmuch as in adequate time the State agency would get the contents of the LSD proved to be so in the laboratory and it is not available to the appellant to canvass that only the field testing kit cannot be the basis for fastening the criminal liability on him.

7. Primarily the appellant has been found in possession of a commercial quantity of LSD and therefore would not

be entitled to bail considering the rigors of Section 37 of the Act. i do not find any merit in the application which is accordingly dismissed.

NUTAN D. SARDESSAI,J.

MF/-