

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-BA-84-2020**

Rashmi Kerkar

... Applicant

Versus

State of Goa

... Respondent

Shri K. Poulekar, Advocate for the Applicant.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondent.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 4 January 2021****ORAL ORDER:**

The applicant is one of the four accused in Crime No.170/2020, registered by Pernem Police Station. The alleged offence attracts sections 20 (a) (i), 20 (b) (ii) (d), and 20 (b) (ii) (c), read with section 29 of the NDPS Act. Arrested on 19.10.2020, the applicant has been in judicial custody ever since. Unable to get the bail from the trial Court, the applicant has come before this Court.

2. Facts, in brief, are that on 18.10.2020 Pernem Police Station reliably learnt that the applicant's husband had had narcotic substances. Based on that information, the police raided the applicant's house and found four members there, the applicant being the only woman. As the search was going on, the applicant's husband, shown as the fourth accused in the FIR, allegedly developed chest pain. Then, the applicant pleaded with the raiding party to allow her to take her husband to the hospital. The police permitted, but the search continued.

3. During the search, the police found 1.37 gms of ganja, 2.55 kgs of suspected charas, and also two plants, believed to be cannabis, in the backyard. After the raid, the police arrested two inmates; the next day they arrested the applicant; and a couple of days later, they arrested the applicant's husband, too.

4. In the above factual background, Shri K. Poulekar, the learned counsel for the applicant, submits that the only provision if ever gets attracted to the applicant in section 29. According to him, there is no *prima facie* material to show that the applicant has either abetted the crime or conspired with the other accused. Merely because the applicant, a housewife, was found in the house could not be a ground to apply section 29 to her. He has also submitted that despite a lapse of about three months, the police so far have not filed the charge sheet; nor have they found anything incriminating against the applicant. Eventually, after taking me through the FIR, Shri Poulekar submits that even the suspected charas, said to be 2.55 kgs, has been tested only in part. And that minuscule part cannot *prima facie* show that the entire substance is charas. That accepted, it cannot be regarded as commercial quantity. Thus, the learned counsel has urged this Court to enlarge the applicant on bail.

5. On the other hand, Shri Mahesh Amonkar, the learned Additional Public Prosecutor, has vehemently opposed the bail. In tune with the prosecution's reply, Shri Amonkar has contended that the applicant had sufficient knowledge about the crime. Her husband's alleged illness is a faked one; and his illness, if any, dated back to 2016, where after he had been taking only pain killers for a minor ailment. No leniency should be shown.

6. To elaborate, the learned Additional Public Prosecutor has also taken me through the FIR and contended that all the accused have been living together and the applicant, supposedly without any source of income, owns eight cars. As the investigation is at the preliminary stage, if the applicant is enlarged on bail, that may affect the investigation. Thus, he has opposed the bail application.

7. Heard Shri K. Poulekar, the learned counsel for the applicant; and Shri Mahesh Amonkar, the learned Additional Public Prosecutor for the respondent.

8. Indeed, the offence is grave. All the four accused are from the same family: the applicant, her husband, her brother-in-law, and her nephew. That is, the husband, his brother, and his brother's son, besides the applicant herself. Admittedly, as the offence is grave, section 37 of the NDPS Act comes in the way of the applicant's entitlement to bail. That hurdle gets removed only if the Court is satisfied that there are reasonable grounds for it to believe that the applicant is not guilty of the offence and that she is not likely to commit any offence while on bail.

9. To begin with, Shri Poulekar has contended that though the building has one single house number, the applicant and her husband live in one portion, and the other brother besides the nephew lives in the other portion. According to him, the contraband was found in the other portion. Indeed, the learned Additional Public Prosecutor contradicts this. For him, it is premature for the Court to rule on that count. Indisputably, there is one house and all the four accused have been found living together, at least, *prima facie*. Let it rest there.

10. Now, I may have to focus on the role the applicant has allegedly played. The police received the complaint that the applicant's husband has been possessing the contraband or dealing in it. When they raided the house, they found the applicant, her husband, and other male members of the family. When the husband developed chest pain, feigned or real; the applicant pleaded with the police and took him to the hospital.

11. The prosecution's persistent contention is that she is part of the household and has been aware of the contraband concealed in the house. Even if we were to accept that the applicant had knowledge of an offence, that does not *per se* attract section 29 of the NDPS Act. There ought to be abatement or conspiracy. The FIR does not reveal even *prima facie* the role the applicant has played. Of course, the police too recorded in the FIR that one of the accused, when confronted, had revealed that she too was part of the trade. That being an extra-judicial confession, at this stage, it may not matter much. A woman in the household cannot be *ipso*

*facto* made an accused because of her presence in the house. It requires a little more than that.

12. At any rate, I should also ensure that she does not indulge in or perpetuate the same or other crimes if the applicant is released on bail. I reckon that can be taken care of by imposing stringent conditions.

13. Under these circumstances, I allow the bail application subject to these conditions:

### **ORDER**

- (i) The application for bail is allowed.
- (ii) The applicant is directed to be released on bail on her executing P.R. Bond for ₹1,00,000/- and on her furnishing one surety, for the like sum, to the satisfaction of the learned trial Judge.
- (iii) The applicant should not leave the State of Goa, without the learned trial Judge's prior permission.
- (iv) The applicant shall not influence, induce, threaten, or coerce the witnesses; nor should she abuse the process.
- (v) The applicant shall not commit similar or other offences.
- (vi) The applicant's failure to abide by these conditions will entail the prosecution to apply for the cancellation of bail now granted to the applicant.
- (vii) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

**DAMA SESHADRI NAIDU, J.**

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