

**IN THE HIGH COURT OF BOMBAY & GOA AT PANAJI****LD-VC-BA-41-2020**

Mr. Emmanuel Chimeucheya Okoro .... Applicant

Versus

State &amp; Anr. .... Respondents

Shri Kamlakant Poulekar, Advocate for the Applicant.

Shri Pravin Faldessai, Public Prosecutor for the Respondent.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 08 DECEMBER 2020****ORAL ORDER:**

The applicant seeks a regular bail for offences under the NDPS Act. A Nigerian national, the applicant was arrested along with five others by the Pernem Police on 14/08/2019, at Arambol, Pernem, Goa. It was allegedly for the offences under sections 20 (b) (ii) (A), 22 (b), 22 (c), r/w 29 of the NDPS Act, 1985. Accordingly, the police registered FIR No. 145/2019, dated 14.08.2019.

2. The prosecution claims that the police found heroin weighing 12 gms in the Activa scooter, ridden by the applicant. From the accompanying car in which the other accused travelled, the police seized 0.12 grams of LSD Papers, 5 grams of cocaine, 505 grams of Ganja, 29 grams of MDMA.

3. On completion of the investigation, the police filed the chargesheet. Thus, the applicant was shown as the accused No 3 in case No NDPS/13/2020 before the Additional Session Court, Mapusa, Goa. Nevertheless, the chargesheet contains no CFSL report, which is still awaited.

4. Unsuccessful in his efforts before the trial Court for the regular bail, the applicant is before this Court under section 439 of Cr PC.

5. Shri. K Poulekar, he learned counsel for the applicant, has submitted that even if the allegations in the charge sheet are taken as true, they only reveal that the police recovered from the applicant's Activa scooter light brown coloured powder in 26 transparent papers in a polythene sachet, totally weighing 12 grams. If it were heroin, it is only a variably quantity. So the statutory rigours of section 37 of the NDPS Act do not apply.

6. The prosecution wanted to tie the applicant down to the crime allegedly committed by the other accused, who were travelling by another vehicle. In that context, Shri. K Poulekar points out that section 29 of NDPS Act, which is the section for punishment for abatement and criminal conspiracy to commit an offence, does not apply, for there is no conspiracy. According to the learned counsel, Mrs Shobha Jamalpur's statement recorded by the police indicates that the applicant hired the scooter on his own and that he had nothing to do with the contraband found in the Santro car.

7. To support his contentions, Shri. K Poulekar has relied on *Akash J Jarizwala v. State of Maharashtra*.<sup>1</sup> He has also relied on *Vivekanand Vikas Bodare v. State of Maharashtra*.<sup>2</sup> In this case, too, the prosecution had invoked section 29 of the NDPS act alleging conspiracy. But this Court rejected that plea.

8. On the other hand, the learned Additional Public Prosecutor has strenuously opposed the bail. He has submitted that the applicant and the other accused have acted in concert. So section 29 does get attracted. He has also submitted that merely because the quantity is variable, the applicant cannot have bail as a matter of course. So he has urged the Court to dismiss the bail application.

9. To begin with, but for section 29 of the NDPS Act, the applicant was allegedly found possessing a variable quantity of the contraband.

---

1 CRMAB No.3032 of 2019 dt. 02.01.2020

2 CRMAB No.995 of 2019 dt. 27.01.2020

Besides, *prima facie*, there does not seem to be any link between the applicant on the one hand and the other four accused, who were travelling by a separate vehicle—a car, at that.

10. In *Akash J Jariwala*, this Court has held that merely because a few people “were found together, it cannot be inferred in the absence of cogent evidence that there was a conspiracy.” Further, the Court has held that “the documents which are part of the complaint, in no manner disclose that they were conspirators to purchase and sell the contraband”. That is, there is no element of conspiracy for the Court to apply section 29 of the NDPS Act. The elements of conspiracy, according to *Akash J Jariwala*, are plan or scheme embodying means to accomplish the object, an agreement, or understanding between two or more accused. And that element is *prima facie* lacking.

11. In *Vivekanand Vikas Bodare*, at para 7, this Court has held that “apart from the fact that the information was common and that the raid was conducted at the same time, there is nothing on record to show even *prima facie* that accused found in two different cars were members of the criminal conspiracy or the act was done in concert”. According to *Vivekanand Vikas Bodare*, “there has to be some evidence *prima facie* to show the accused were acting in connivance with each other, and there was a conspiracy to commit the crime, or there was a meeting of mind to commit the alleged act.”

12. Besides, it was also brought to the Court’s notice that the applicant has been staying in India without a valid visa and passport. On that count, FIR No 147/2019 has also been lodged against him. The applicant has, however, stated that he does have a valid Passport with No. A03574059, issued by the Federal Republic of Nigeria. Using that he is said to have entered India, and it has been deposited with the Court of Addl. Session on 05/06/2020. The passport has been verified by the FRRO, Goa, with the Unique Case File data (UCF). And its report, too, is available on record. Nevertheless, the passport, valid it may have been, has

expired. So the applicant wants to take steps to renew it, immediately on his release; in any case, he will have it renewed in six months after his release.

13. The applicant has been in custody from 14.08.2019, the date of his arrest. The quantity of heroin seized from him is 12 grams, which is indisputably a variable quantity. A perusal of the charge sheet *prima facie* fails to reveal any conspiracy between the applicant and the other accused. So, at this stage, it is difficult to hold that section 29 applies to the offence.

12. This Court has occasion to deal with a bail application—LD-VC-BA-51/2020 (*Togo Chigozie Ozoemena v. State of Goa*)—in which the applicant did not possess valid travel documents. While granting bail, this Court directed the applicant to place the valid travel documents before the trial Court once he secures them—preferably in six months after his release.

14. Under these circumstances, this Court is required to impose strict conditions while granting bail. The applicant should make every effort to renew his passport at the earliest or else the law may take its own course on that count.

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

### **ORDER**

- (i) The application of bail is allowed.
- (ii) The applicant is directed to be released on bail on his executing a P.R Bond for Rs 50,000/- and on his furnishing two sureties out of which one local surety, each for the like sum, to the satisfaction of the Learned Additional session Judge –I, Mapusa.
- (iii) The applicant shall visit the Jurisdictional police station every day at 11.00 am.
- (iv) The applicant shall place before the trial court a copy of the lease agreement the applicant is said to have entered with his landlord within eight days of his release from custody.

- (v) The Passport deposited in the Court be released to the Applicant in order to permit him to renew the same and the once the applicant secures his renewed passport, he must place them before the trial Court immediately on it being renewed and in any case within six months after his release.
- (vi) The applicant should not leave the State of Goa, without prior permission of the Ld Additional Sessions Judge–I, Mapusa.
- (vii) The applicant shall attend the hearing of the case on the dates fixed by the trial Court
- (viii) The application shall not influence, induce, threaten, or coerce the witness; not should he abuse the process.
- (ix) The applicant shall not indulge in any further crime, similar or otherwise.
- (x) 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.
- (xi) The Bail Application stands disposed of.

Parties to act on the authenticated copy of this order.

**DAMA SESHADRI NAIDU, J.**

NH