

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-BA-4-2020.

Rajeev Das ... Applicant.

Versus

State ... Respondents.

Shri K. Paulekar, Advocate for the Applicant.

Shri Pravin Faldessai, Addl. Public Prosecutor on behalf of the State.

Coram : Nutan D. Sardessai. J.

Dated : 19th June, 2020

P.C.:

Heard Shri K. Paulekar, learned Advocate for the Applicant who submitted that the applicant was placed under arrest on 04.01.2020 for possession of 2.24 gms of Cocaine, 0.17 gms. of LSD, 0.21 gms of Ecstasy and 203 gms of Ganja. It was his contention that the complainant and the investigating officer were one and the same and which was in violation of the judgment in Mohan Lal's case where the Hon'ble Supreme Court has clearly

deprecatd the practice of the investigating officer and the complainant being one and the same and which was not in the interest of the accused as there was every possibility of the complainant and the investigating officer seeking the conviction of the accused. His next contention was that the substance allegedly found with the applicant was LSD paper weighing 0.18 gms but the testing was done of the powder and there was no field testing done of the LSD paper. Besides there was no Chemical Analyser's report for the LSD and therefore on that count too there was no proof that what was found with the applicant was the commercial quantity of LSD. The rigors of Section 37 of the Act were therefore not attracted to the case and therefore the applicant was entitled to the benefit of bail.

2. He placed reliance in Florian Kern and the judgment in Mohan Lal (supra) to substantiate his case for the order of release in his favour.

3. Shri Pravin Faldessai, learned Addl. Public Prosecutor on behalf of the State contended that the complainant was different and the investigating officer was different and therefore, the judgment of Mohan Lal was not attracted to the case. Therefore,

there was no possibility of the applicant being exposed to any judgment of conviction in that context and the judgment of Mohan Lal was clearly distinguishable in that regard. Insofar as the testing of LSD was concerned, it was his contention that apart from LSD paper, cocaine was also found with the accused in variable quantity and therefore it cannot be ruled out that the testing of the white powder pertained to cocaine and that therefore there was no reason to release the applicant on bail.

4. i have heard learned Advocate Shri K. Paulekar for the applicant and Shri P. Faldessai, learned Addl. Public Prosecutor on behalf of the State and also considered the judgment in Mohan Lal (supra) and that rendered by this Court in Florian Kern. It is not particularly in dispute that a substantial part of the investigation started from the complainant which was preceded by the receipt of reliable information at the instance of PSI Viraj Naik who had reduced the information to writing, secured the presence of two respectable persons as panchas and thereafter conducted the raid at the said spot. He had also collected the seals from the superior officer to whom information was given as mandated by law and thereupon conducted the panchanama in the presence of the two respectable pancha witnesses when the alleged drugs were seized

from his possession and tested at the spot with the aid of the field testing kit. Besides he had also returned the seals to the superior officer and also deposited the sealed property in the malkana of the Police Station for safe custody apart from sending the letter to the Scientific Officer for its analysis and report in accordance with law. At the same time it is not particularly in dispute that the offence was registered by another police officer of the rank of PSI who had then carried out the investigation and filed the chargsheet against the accused. Hence the apprehension of Shri K. Paulekar, learned Advocate for the applicant that the complainant and the investigating officer are one and the same and who would be inclined to ensure the conviction of the applicant stands negated. The judgment in Mohan Lal (supra) would squarely not apply to the case of the applicant.

5. However, insofar as the commercial quantity of LSD paper is concerned, the records reveal that though the LSD was found with the applicant in the paper form, there was apparently no field testing done at the spot of the raid as evident from the complaint inasmuch as what was subjected to field testing kit was white colour powder while LSD was in the form of paper and not in the form of white powder. There was apparently no chemical analysis

report available for the purpose of confirming that the LSD purportedly found with the applicant was commercial quantity. In the circumstances therefore, this being a major flaw on the part of the complainant, the applicant cannot be confined to custody indefinitely although there might be some merit in the contention of Shri Pravin Faldessai, learned Addl. Public Prosecutor that the trial would determine the end result of the LSD paper. Nonetheless, for such protracted delay and despite the filing of the chargesheet and in the absence of the Chemical Analyser's report the applicant cannot be continued in custody indefinitely.

6. i have also considered the order passed by this Court in Florian Kern where the judgment of Mohan Lal was considered at length and also the judgment in Mohan Lal (supra) but which does not find parity with the case of the applicant hence the respectful departure with the judgment in Mohan Lal (supra). Be that as it may, the rigors of Section 37 of the Act would not apply to the case in the peculiar facts and circumstances and in the result, i am inclined to release the applicant on bail on the following terms and conditions:-

1. He shall be enlarged on bail on executing bail bonds in

the amount of ₹1,00,000/- (Rupees One Lakh Only) and furnishing a local surety in coextensive amount to the satisfaction of the learned Special NDPS Court.

2. He shall not leave the State of Goa and the territorial waters of India without the prior written permission of the Court concerned.
3. He shall not tamper with the witnesses and hamper the course of trial.
4. The applicant shall ensure his presence at the trial on every date of hearing.
7. In these terms, the application stands disposed off.
8. Parties to act on the basis of the authenticated copy of this order.

Nutan D. Sardesai, J.

MF/-