

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-BA-86 & 87-2020****LD-VC-BA-86-2020**

Ferdinand Udoji Ukonkwo Applicant

Versus

State of Goa & Anr. Respondents

AND**LD-VC-BA-87-2020**

Micheal Okafor ... Applicant

Versus

State of Goa & Anr. ... Respondents

Shri K. Poulekar, Advocate for the Applicants.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 22 DECEMBER 2020****ORAL ORDER:**

On 20.10.2020, the personnel of Saligao Police Station conducted a raid and arrested both the accused in these two bail applications, besides another person. This third accused has already been enlarged on bail. As the police seized some contraband, they have registered Crime No.60/2019. This crime attracts Section 21(b), 22(b), 22(c) and 29 of the NDPS Act. As the applicants have been in judicial custody ever since the date of their arrest, they unsuccessfully tried to secure bail from the trial Court; later, they have filed these applications.

2. If we go by the prosecution version, based on credible information, the police conducted a raid and apprehended these three accused. The first accused, that is the applicant in Bail Application No.87/2020, allegedly possessed 16 gms of cocaine and 0.18 gms of LSD. When the substance had been subjected to chemical analysis, the FSL,

Hyderabad, confirmed cocaine, but not LSD. Thus, if we take cocaine alone, it is 16 gms—a variable quantity.

3. Accused no.2, that is the applicant in Bail Application No.86/2020, allegedly possessed 13 gms of MDMA; and the third accused possessed 0.70 gms of Ecstasy tablets. As the third accused has already been enlarged on bail, we need not refer to him.

4. If we confine our discussion to the second accused, 13 gms of suspected MDMA was sent for chemical analysis. As this substance was found in various polythene sachets, it was divided into two samples: C1 and C2. Now, the chemical analysis report reveals that sample C1 weighing 4.8043 gms has tested positive. As to the second sample, it was divided into five parts. The first to third parts contained 2.2389 gms of methamphetamine. The fourth sample is cocaine weighing 1.062 gms, and the fifth sample is again MDMA, weighing 0.8011 gms.

5. In the above factual background, Shri Poulekar, the learned counsel for the applicants, submits that indisputably the substance found with the first accused is of a variable quantity. As to the substance found with the second accused, MDMA falls short of commercial quantity. Then, methamphetamine and cocaine too fall short. To be specific. He submits that cocaine is a small quantity and methamphetamine variable quantity.

6. As his second contention, Shri Poulekar submits that the substance was allegedly found on the person of the accused. Despite that, the police did not offer them the option of having been checked in the presence of a Gazetted Officer. According to him, section 50 of the NDPS Act stands breached. So he has urged this Court to enlarge the applicant on bail because section 37 does not get attracted to the offence.

7. As to the application of section 29 of the NDPS Act, Shri Poulekar further submits that there is absolutely no material in the chargesheet to hold that even *prima facie* there is any conspiracy among these three accused, though they may have been travelling in one vehicle.

8. On the other hand, Shri Mahesh Amonkar, the learned Additional Public Prosecutor, submits that if we take column 238 of the Schedule annexed to NDPS Act, the entire mixture must be treated as the substance. So 13 gms of MDMA with or without whatever other mixtures should be treated as commercial quantity. He has also contended that the applicants have no valid travel documents. They have illegally entered the country and have been indulging in drug pedalling. On the interaction of section 50 of the NDPS Act, Shri Amonkar submits that the raiding party, in fact, had offered the applicants the option, but they did not take it. At any rate, he also stressed that section 29 of the NDPS Act squarely applies.

9. In response, on the question of the applicants not having the travel documents, Shri Poulekar insists that they have valid travel documents and they have already filed them on record. Therefore, that contention may not be available for the prosecution. According to him, the first accused has a valid passport, though not the second accused. It has, in fact, expired.

10. I reckon, there is a force in the applicants' contention that the substances found with the second accused, too, on chemical analysis have come to be either of variable quantity or small quantity. As to the criminal antecedents, the first accused has been undergoing trial in one case. In that case, he has already been enlarged on bail and attending the Court regularly. The second accused has no criminal antecedents.

11. Under these circumstances, I hold that both the accused are entitled to bail subject to conditions. I, nevertheless, emphasize that if either applicant is found indulging in any other crime, similar or otherwise, that will result in the cancellation of this bail.

12. Under these circumstances, I allow the bail applications subject to these conditions:

ORDER

- (i) The applications of bail are allowed.

- (ii) The applicants are directed to be released on bail on their executing P.R. Bond for ₹25,000/- each and on furnishing two sureties each for the like sum, to the satisfaction of the learned trial Judge.
- (iii) The applicants should not leave the State of Goa, without prior permission of the learned trial Judge.
- (iv) The applicants shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (v) The applicants shall not commit similar or other offences.
- (vi) The applicants' 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 Applications stand disposed of.

Parties to act on the authenticated copy of this order.

DAMA SESHADRI NAIDU, J.

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