

IN THE HIGH COURT OF BOMBAY AT GOA.

(LD-VC-BA-61/2020)

Eduardo Lino De Abreu
De Pinto de Santana Applicant.

Vs

State Respondent.

Shri K. Poulekar, Advocate for the Applicant.

Shri P. Faldessai, Addl. Public Prosecutor for the respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date: 23 October 2020.

PC.

The applicant is the sole accused in Crime No.11/2020, registered by the Goa Anti Narcotic Cell (ANC) for the alleged offences under section 20 (b) (ii) (B) of NDPS Act, 1985. He was arrested on 24.9.2020 and remanded in Judicial custody. He faces the allegation of carrying of 2.5 kgs ganja, which is a variable quantity. He filed successive bail applications on 25.9.2020 and again on 8.10.2020 before the trial Court but could not succeed. Now, he is before this Court under Section 439 of Cr.P.C.

2. Heard Shri K. Poulekar, the learned counsel for the applicant, and Shri P. Faldessai, the learned Additional Public Prosecutor for the respondent.

3. Though both the learned counsel have extensively argued the matter, I will just set out what is material for our purpose: granting or refusing bail.

4. Indeed, ganja of 2.5 kgs is a variable quantity. In this context, Shri Poulekar points out that as per the complaint, ANC has seized from the applicant green leafy substance. Taking me through the NDPS Act, Shri Poulekar insists that leaves and seeds do not fall under the prohibited

substance. On the contrary, ganja is the flowering top of cannabis the plant. Therefore, the ANC's very description of the substance throws doubts on whether it has seized from the applicant ganja as defined under the Act. Then, drawing my attention to the *Rhea Chakraborty v. Union of India*, a decision recently rendered by this Court, Shri Poulekar contends that variable quantity and small quantity do not attract the rigours of Section 37 of the Act. He further points out that the applicant is an engineer working in a multinational company and has no criminal antecedents.

5. On the other hand, Shri Phaldessai, the learned Additional Public Prosecutor, refers to the say the prosecution has filed and stresses that the applicant has confessed that he had procured the substance from another person. For that alleged supplier, the ANC has been on the lookout. According to him, given the applicant's confessional statement, section 29 gets attracted to the case. Eventually referring to the *Rhea Chakraborty's* case, Shri Faldessai has strenuously contended that the rigours of section 37 do apply across the board, notwithstanding the quantity.

Indeed, as to the nature of the substance—whether the seized substance is the flowering top or the leafy material—it is premature for me to venture into any conjecture, at this stage.

6. On the perusal of *Rhea Chakraborty's* case, I understand that all the offences under the NDPS Act are non-bailable. And Section 37 applies to commercial quantity, by default. When the quantity is either variable or small, the crime must also attract section 19, 24 or 27A of NDPS Act for section 37 to apply. Here no such eventuality arises.

Besides, the applicant is an engineer with no criminal antecedents. I reckon it is a fit case for the Court to enlarge the applicant on bail. I, therefore, allow this application and enlarge the applicant on bail subject to these conditions:

ORDER

- (i) The applicant is directed to be released on bail on his executing P.R. Bond for Rs.30,000/- and on his furnishing two sureties, each for the like sum, to the satisfaction of the learned Sessions Judge, Panaji.
- (ii) The applicant should not leave the State of Goa, without prior permission of the learned Sessions Judge, Panaji.
- (iii) The applicant shall attend the hearing of the case on the date fixed by the trial Court.
- (iv) The applicant shall not influence, induce, threaten, or coerce the witness; nor should he abuse the process.
- (v) 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.
- (vi) The Bail Application stands disposed of.

DAMA SESHADRI NAIDU, J.