

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**(LD-VC-BA-40/2020)**

Prince Ezeawa ..... Applicant.

Vs

State and anr. .... Respondents.

Shri K. Poulekar, Advocate for the Applicant.

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

**Coram:- DAMA SESHADRI NAIDU, J.**

**Date: 5 October 2020.**

**PC.**

The applicant is the sole accused in crime no.27/2018 for the alleged offences under section 22(c) and 20(b)(ii) (A) of NDPS Act 1985. As seen from the record, the personnel of Anti Narcotic Cell, Panaji, Goa, on 30 November 2008 raided and apprehended the applicant with certain contraband. After his arrest and remand, the prosecution sent the contraband, that is Exhibit A and Exhibit C, for chemical analysis. That chemical analysis revealed that Exhibit A contained LSD and Exhibit C charas.

2. In the above factual background, the applicant initially applied for bail before the Additional Sessions Judge-I, Panaji, but could not succeed. The trial Court, through its order dated 18.8.2020, dismissed the bail application. Now, the applicant has come before this Court, invoking section 439 of Cr PC.

3. Shri K. Poulekar, the learned counsel for the applicant, has taken three principal pleas and contended that the applicant is entitled to bail on all the three grounds. First, according to him, the contraband is of a variable quantity. The second, as the contraband had allegedly been found on the applicant's person, there ought to have been strict compliance with

Section 50 of the NDPS Act. But that was not to be. The third, the CFSL, Calcutta, has not examined all the 20 sheets of paper comprising Exhibit A; that was despite the prosecution's specific request. To support his contention about the non-compliance with section 50 of NDPS Act, Shri Poulekar has relied on *Rashidi Ally Chigale v. State of Maharashtra*<sup>1</sup> and *State of Rajasthan v. Parmanand*<sup>2</sup>.

4. On the other hand, Shri P. Faldessai, the learned Additional Public Prosecutor, with equal intensity, has submitted that the prosecution has complied with statutory provisions to a perfection. To elaborate, he has submitted that the forensic report has referred to Exhibit A as the whole. So, the applicant's plea that the laboratory has not examined each of 20 papers independently is unavailable for him. On the question of whether contraband is of a commercial or variable quantity, Shri Faldessai has insisted that the laboratory has specifically mentioned the weight. And that amply demonstrates that at least the LSD substance is of a commercial quantity.

5. Finally, Shri Faldessai has drawn my attention to section 50 of the NDPS Act. In this regard, he has submitted that the Deputy Superintendent of Police present at the site is a Gazetted Officer. He was, however, not part of the raiding team. As the personnel of Anti Narcotic Cell had prior information about the contraband, they requested the presence of the Dy. SP, at the site, so that there could be statutory compliance. Shri Faldessai has pointed out that prosecution does explicitly mention the names of the raiding party, which does not include the Dy. SP's name. Therefore, he has urged this Court to dismiss the bail application.

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<sup>1</sup> 2002 SCC online Bom.807

<sup>2</sup> (2014) 5 SCC 345

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

7. Indeed, I may first begin with whether the CFSL has examined each of the 20 sheets seized from the applicant. As pointed out by Shri Faldessai, the CFSL report refers explicitly to Exhibit A, which contained all the 20 sheets separated only with perforation. In fact, Exhibit A contains one long sheet of paper with perforations. And in the context of the prosecution's request to the laboratory to examine all the sheets together, I reckon the report is unambiguous that it has taken into account the entire sheet. Then, let us consider whether the drug infused into Exhibit A sheet of paper is of commercial quantity or variable quantity. The applicant's counsel agrees that 0.1 gram is a commercial quantity. The CSFL report mentions the gross weight as 0.31 grams, that is without polythene packet. The net weight is mentioned as 0.224 gms. The CFSL report reads:

*"Note:1. Results relate only to exhibits tested.*

*2. After examination, the remnants of each of the exhibit marked here as Chem/556/18/A and Chem 556/18/B weighing 0.224 gram and 8.3 gram (without polythene packet in both the exhibits) respectively have been sealed within the said respective paper packet with the seal impression given below and are being returned herewith."*

8. Analysing the above note, Shri Poulekar contends that we should arrive at the net quantity by deducting 0.224 grams from 0.31 grams. According to him, 0.224 grams is the weight of the paper, and the difference ought to be the trace of LSD infused into the perforated sheet of paper. I am afraid at least prima facie, and without prejudice to the applicant's contentions during the trial, I must hold that 0.224 grams mentioned in the CFSL report is the net weight of the substance that has been infused into the paper. That was not the weight of the paper, to my

mind. That accepted, we must also accept that what was found in Exhibit A amounts to a commercial quantity.

9. Finally, I may turn to examine whether there is any breach of section 50 of the NDPS Act. In this context, this Court in *Rashidi Ally Chigale* has found, on facts, that the gazetted officers were part of the raiding team. So it has observed that “as this Court interprets S. 50, [it] does not mean that such gazetted officers should be those officers who are members of raiding party. They should not be partisan gazetted officers interested in getting the conviction against the accused”. According to *Rashidi Ally Chigale*, section 50 must be complied with in its real spirit. The members of the raiding party should inform the person to be searched that he has a right to be searched before a nearest gazetted officer or the nearest Magistrate. And his option of getting searched before such gazetted officer or a Magistrate should not be polluted or vitiated by no inducement or allurements. So, the raiding party informing the person to be searched that there is a gazetted officer among the members of that raiding party itself stands vitiated.

10. In the end, *Rashidi Ally Chigale* has observed that whenever sentence is severe, the Courts are watchful to see that the important provisions of the law are followed by the investigating agency when it collects the material or evidence. If the investigating agency engaged in investigation followed a dubious method, its evidence would not be above suspicion and would always be vulnerable. It would not create confidence in the judicial mind. Now, let us turn to *Parmanand*. In fact, this decision too disapproves of the gazetted officer being a part of the search of time.

11. Indeed, the judicial dictum is unmistakable, if the gazetted officer is part of the raiding team, that vitiates the safeguard provided under section 50 of the Act. But here, page 2 of the complaint contains the names of the raiding party. And the name of the gazetted officer

Sammy Tavares, the Dy. SP., is absent. Therefore, I reckon that the above two judgments do not help the applicant's cause.

Under these circumstances, I find no grounds that mitigate the rigours of Section 37 of the NDPS Act so that the applicant can be enlarged on the bail. As a result, I dismiss the bail application.

**DAMA SESHADRI NAIDU, J.**

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