

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CRI-38-2020**

Michael Okafor ... Petitioner  
Versus  
State of Goa & Anr. ... Respondents

Mr. K. Poulekar, Advocate for the Petitioner.  
Mr. D. Pangam, Advocate General for the State.  
Mr. Waghmare, Director of Forensic Laboratory, Verna Goa.

**Coram:- M. S. SONAK &  
SMT. M. S. JAWALKAR, JJ.**

**Date:- 20<sup>th</sup> October, 2020**

**P.C.**

Heard Mr. Poulekar, learned counsel for the Petitioner. Mr. D. Pangam, learned Advocate General for the State as well as Mr. Waghmare, Director of Forensic Laboratory, Verna Goa.

2. The prayer clauses (c) and (d) of this petition read as follows :-

(c) That a writ of mandamus or a writ in the nature of Mandamus be issued directing the Government of Goa to set up the Chemical laboratory for testing of all drugs listed in the Narcotics Drugs & Psychotropic substances Act, 1985;

(d) That a writ of mandamus or a writ in the nature of Mandamus be issued directing the Government of Goa to appoint the Nodal Officer and Pairvi Officer for each NDPS Court as directed by the Hon'ble Supreme Court.

3. According to us, the aforesaid prayer clauses are not restricted to the interest of the Petitioner, but raised issues of public interest and the interest of administration of criminal justice in this State.

4. Therefore, we had requested the learned Advocate General to appear in this matter and also directed the Respondents to file affidavit indicating the steps taken to make available the testing facilities for drugs and psychotropic substances in the State of Goa itself.

5. In Goa, there are several prosecutions pending under the NDPS Act, 1985. There are several such cases involving foreign nationals. It appears that there are no facilities presently available in Goa to test most of the drugs and psychotropic substances. Therefore, the seized items have to be sent to the laboratories outside the State of Goa i.e. Hyderabad etc. This invariably result the delays in obtaining test reports.

6. Such delays in obtaining the test reports, in the first place affect the rights of the accused persons to speedy trial, which is one of the facets of Article 21 of the Constitution of India. Secondly, based on such delay, the accused persons claim default-bail. As noted earlier, there are several cases involving foreign nationals. Once they are released on bail, the record indicates that there is a tendency to jump bail and flee

from justice, particularly in NDPS matters.

7. In another matter i.e. SMPIL 1 of 2020, an affidavit was filed before us by the State which indicated that almost over 90% of the foreign nationals who were enlarged on bail have jumped the conditions of bail and fled from justice.

8. Therefore, we feel that it is high time that some effective steps are taken by the State Government to set up a full fledged laboratory in Goa itself, where such drugs and psychotropic substances can be tested within a reasonable period. The State Government also accepts this position and it is their case that such a laboratory has already been set up at Verna but some more efforts are necessary to make the same fully functional.

9. Dr. Narayan Waghmare, the Director of Forensic Science Laboratory at Goa, (GFSL) has filed an affidavit in this matter on 17<sup>th</sup> October, 2020 placing on record a status report in this regard.

10. From the perusal of the affidavit, we get an impression that though the laboratory facilities are made available, the testing of most of Narcotics Drugs and Psychotropic Substances is not possible for want of “*standard samples*” which are necessary for such test. Further, we get an distinct impression that this process of procuring standard samples is

delayed mainly on account of bureaucratic red tape. It is quite unfortunate that though the NDPS Act entered into force in 1985 and there are several prosecution launched under this Act in the State of Goa, till date there are no proper facilities for testing the seized materials. As a result, the prosecutions are delayed, the prosecution failed to suspects – by default are released on bail, and suspects then flee from justice. Thus the very operation of the NDPS Act is frustrated on account of non availability of proper facilities in the State of Goa itself. This is an extremely sorry State which should have been redressed by the authorities with greater sense of urgency and responsibility.

11. The affidavit states that the Goa State Forensic Science Laboratory (GFSL) was established only in the year 2013. However, even after seven years of its establishment, the GFSL is capable of only testing mainly, substances like charas and ganja, and that too since the year 2019 only.

12. The affidavit states that the testing of narcotics drugs and psychotropic substances is not possible at GFSL for want of about 30 standard samples. The affidavit then purports to explain the movement of files from 13.01.2020 till date for the procurement of 28 out of 30 standard samples, since two samples have been procured by now.

13. The affiant, who is the Director of GFSL seems to carry an

impression that as long as he is able to explain how the files/proposals keep moving from table to table in bureaucrat circle, his responsibility to ensure that the GFSL is fully functional is over. The affiant was certainly expected to be proactive on this issue and not rest content by simply explaining the movement of files in the bureaucrat circles and thereafter almost plead helplessness.

14. The affidavit indicates that sorry state of affairs in which the procurement of this standard samples is delayed and yet, none of the officers or authorities accept any responsibility for such delay. The entire object appears to be to shift the responsibility from one officer to other or rather from one table to other and rest content that they are actually doing something to make this GFSL functional. There was inordinate delay in establishing the GFSL. After the GFSL was established in the year 2013, till date, it is not in a position to test most of the drugs and psychotropic substances. According to us, this delay coupled with insensitivity is quite callous and it is high time that someone assumes serious responsibility for making the GFSL functional in all respects.

15. There is absolutely no explanation as to why the establishment of the GFSL in 2013, no efforts were made to procure the standard samples all this time. There is no explanation as to why procurement of such standard samples which, we were informed would cost the State Government an amount hardly Rs.25 lakhs or thereabouts

took so long and still taking so long. For the present at least, we would not like to accept that this delay is deliberate and for extraneous considerations. However, if such position continues, further probe will become necessary.

16. To our pointed query Dr. Waghmare tried to state several eventualities which might lead to further delay in procuring the standard samples. However, ultimately, he assures this Court that e-tenders will be issued as early as possible and the entire process of procuring standard samples will be completed maximum within a period of three months from today. Since, there is no choice, we accept this statement of Dr. Waghmare as an undertaking to this Court. We direct all concerned to ensure that such standard samples are procured as expeditiously as possible and maximum within a period of three months from today.

17. Taking into consideration the statements of Dr. Waghmare particularly on the aspect of potential delays, we make it clear that should any officer or authority obstruct or delay the process of procurement then, Dr. Waghmare, to file affidavit in this matter to that effect, by naming such officer or authority. However, if this is not done the entire responsibility will be on Dr. Waghmare so that the solemn undertaking is not breached. Further, we clarify that this liberty is not to be treated as license to involve this Court into finding solutions to routine bureaucratic problems. Ultimately, it is for the State

Government to solve such problems and ensure that the provisions of NDPS Act are not frustrated in this manner.

18. Dr. Waghmare has stated before us that 30 standard samples which now have been procured are the ones which are used by renowned laboratories like CFSL, Hyderabad etc. He states that once such standard samples are procured the tests of drugs and psychotropic substances will be carried out at GFSL, Verna Goa without much difficulty.

19. Dr. Waghmare also assured us that currently all facilities for testing of drugs and psychotropic substances are available at GFSL, Verna and once standard samples are procured, such testing can commence in right earnest.

20. He pointed out that presently there are only two scientists who can undertake such tests and there will be necessity of more scientists/chemical analyzers. He stated that he will immediately move necessary proposals to the State Government in this regard. All such statements made by Dr. Waghmare and the assurances given by him are treated as an undertaking to this Court and therefore Dr. Waghmare will have to take all steps to abide by the same. Dr. Waghmare will have to ensure that within three months the GFSL is fully and effectively functional.

21. In so far as the prayer clauses (c) and (d) of this petition are concerned, we appoint Mr. Shailendra Bhobe as Amicus Curiae to assist us in this matter.

22. In this case, we also direct the Director of prosecution to file an affidavit by 1<sup>st</sup> December, 2020 indicating the status of pending matters under the NDPS Act. By pendency, we do not refer only to the matters pending before the Court but also the matters pending in various police stations, ANC etc., where cases have been registered, but no charge-sheet is filed. Affidavit, to indicate in brief the reasons for non filing of the charge-sheet. Affidavit to be accompanied by necessary statistics, if possible in a tabular sheet (chart).

23. The registry to make available Mr. Shailendra Bhobe the case papers in this matter so that he is in a position to assist us effectively.

24. Mr. Poulekar then raises the issue of test reports concerning the Petitioner. We place the matter on 2<sup>nd</sup> November, 2020, on which date the learned Public Prosecutor to inform us about the status report of the Petitioner.

**SMT. M. S. JAWALKAR, J.**

**M. S. SONAK, J.**

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