

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CRI-53-2020**

Mr Michael Neuschler ... Applicant

Vs

State & Anr. ... Respondents

Ms Caroline Collasso, Advocate for the Petitioner.

Shri Gaurish Nagvekar, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 20th OCTOBER 2020****P.C. :**

In Crime No.48 of 2019 of Anjuna Police Station, the applicant is an accused. It is for the alleged offences under Section 21(b), 20 (b) (ii) (a) of the NDPS Act. He allegedly possessed 2.3 gms of cocaine and 6.2 gms of charas. The 6.2 gms of charas, categorized as small quality, is said to carry a market price of ₹6,000/-. That apart, the seized cocaine weighed 2.3 gms, just 0.3 grams above the small quantity. Thus, it is treated as a variable quantity. Of course, the applicant contends that the cocaine substance was weighed with the polythene bag.

2. In fact, the applicant was arrested on 26.11.2019 and was granted bail on 12.12.2019 with conditions. And those conditions were complied with.

3. Later, the applicant applied to the trial Court for modification of the bail conditions and for the Court's permission to leave the country. But, through its order dated 06.08.2020, the trial Court dismissed that application. Then, the applicant has filed this Criminal Misc. Application.

4. Heard Ms Caroline Collasso, the learned counsel for the applicant, and Shri Gaurish Nagvekar, the learned Additional Public Prosecutor, for the respondents.

5. Ms Collasso, the learned counsel for the applicant, has submitted that the applicant is a legitimate tourist with proper travel documents. According to her, he has come to Goa many times earlier, too. Now, with the uncertainty about when the trial is likely to conclude, it is tough for the applicant, a citizen of Austria, to stay here indefinitely without any gainful employment. He is said to have been living on financial help from his mother in Austria.

6. To elaborate, Ms Collasso submits that even the chemical analysis report has not so far been received, though the alleged offence took place close to one year ago. Therefore, reminding the Court that even a foreign national can have his fundamental rights intact, Ms Collasso wants this Court to allow the application. She repeatedly assured the Court that the applicant would provide all the details about his permanent address and also the place of his stay in Austria so that whenever the trial Court requires his presence during trial, he will come back to India.

7. In response, Shri Nagvekar, the learned Additional Public Prosecutor, has submitted that it has become a regular phenomenon that most foreign nationals facing criminal charges have never come back to face trial once they were allowed to leave the country. In this context, he has drawn my attention to an application pending before a Division Bench of this Court. It is on the issue of the foreign undertrials not returning to India to face the trial. According to Shri Nagvekar, this Court has taken that case on file as a Suo Motu PIL and passed detailed orders about the steps the authorities concerned should be taking to curb this trend. Therefore, Shri Nagvekar has opposed the application.

8. In reply, Ms Collasso has submitted that the case before the Division Bench involves the foreigners who entered the country without

proper travel documents and left the country's borders without the Court's leave, abusing the bail. According to her, the applicant's case cannot be likened to the issue raised in that Suo Motu Public Interest Litigation.

9. When I have proposed that the trial Court could be directed to conduct the trial expeditiously and dispose of the case at the earliest, Ms Collasso has pointed out the practical difficulty the trial Court faces. She has, first, cited the delay in FSL report; second, reminded me of the docket pressure the trial Court faces; and third, pointed to the pandemic situation. Then I have proposed that there ought to be some incentive for the applicant to come back to India and face the trial. In that context, Ms Collasso has agreed, on instructions, that the applicant is willing to provide cash surety to a reasonable extent as this Court may fix. Ms Collasso has submitted that already the applicant has provided one local surety with ₹50,000/-. In addition to that, the applicant is willing to provide cash surety of ₹50,000/- more. Finally, the applicant, as the learned counsel informs me, has agreed to deposit ₹3.00 lakhs as the cash security.

10. Under these circumstances, I allow the bail application on the following conditions.

ORDER

- (i) The bail condition no.d is relaxed; the applicant shall have his passport returned.
- (ii) The applicant is permitted to leave the country on his providing cash security for ₹3.00 lakhs to the satisfaction of the learned District & Sessions Judge, Panaji; it is in addition to the surety offered when he had been granted bail.
- (iii) The applicant should provide to the trial Court the complete address and all other relevant details of his stay in

Austria, including his contact details, the employment details —once he secures any gainful employment there.

(iv) The applicant shall undertake to return to India whenever the trial Court requires his presence.

(v) This Miscellaneous Application stands disposed of.

DAMA SESHADRI NAIDU, J.

NH