

Special Criminal Case (NDPS) No.23/2016

O R D E R on Exhibit D-54

(Delivered on this 10th day of the month of October of the year 2018)

This is an Order on an application filed by the accused in which he prayed to be released on bail. The grounds on which bail is sought is that there is no prima facie case made out against him, that no recovery was made from the accused, that PW1 had not given details or description of the test conducted by him, that there is no record to show that the weights of Exhibits C-1, C-2, and C-3 were taken without the plastic wrappings, that there is no material to indicate the actual weight of cocaine powder in Exhibits C-1, C-2 and C-3, that the evidence of PW1 suggests that the entire amount tested was not cocaine, that the narcotic substance recovered was neither forwarded to the nearest police station nor to an Officer empowered under Section 53 of the NDPS Act and that Mr. Bhanu Pratap who is the complainant in the present case had also carried out the entire investigation, which goes against the principle of fair trial of an accused as enumerated by the Hon'ble Supreme Court in the Judgment dated 16.08.2018 in the case of **Mohan Lal V/s State**.

2. The prosecution filed a reply objection to the release of the accused on bail, stating that there was sufficient

evidence against the accused regarding his involvement in the seizure of narcotic drugs. It was also submitted that after cross examination of PW1, the accused had filed an application for bail which was rejected and that the application for bail filed by the accused before the Hon'ble High Court was also rejected. Further it was submitted that as per the report of the CFSL, it is clear that the actual weight of the cocaine without the polythene packets falls under commercial quantity and it attracts Section 37 of the NDPS Act. It was also submitted that PW1 has explained the method of testing and that this issue was raised by the accused in the earlier bail application, which was rejected. It was then submitted that PW1 has given clarification regarding his test, with the name of test and other details. It was prayed that the application be dismissed.

3. As far as, the contention of the accused that PW1 had not given details or description of test conducted by him, it is to be stated that the matter is at the stage of inquiry before charge and the prosecution can elicit this information by recalling PW1. In this respect I am guided by the Order dated 22.06.2017 passed by the Hon'ble High Court in the case of **Gary Baird V/s State and anr. Criminal Writ Petition No.91 Of 2017** in which the Hon'ble High Court upheld the Order of a Special Judge recalling the Deputy Director of

CFSL to bring out the details and the nature of test conducted, the grounds for his opinion and the conclusion that the substance tested was contraband.

4. It is relevant to take note of the fact that the accused had filed an application for bail before the Hon'ble High Court which was registered as Criminal Application (Bail) No.166 Of 2017 and by Order dated 01.09.2017 the Hon'ble High Court had rejected the application for bail and in the said Order it was held that it is always open to the prosecutor to recall and re-examine the Chemical Analyser and get details of the test carried out by him on the said contraband. As the Hon'ble High Court had held so, the accused cannot once again raise the same contention in this bail application.

5. Coming to the Judgment dated 16.08.2018 of the Hon'ble Supreme Court in the case of **Mohan Lal V/s State,** it is seen that in that matter an FIR was lodged by a Sub Inspector stating that why he was on patrol duty, on seeing the accused, he (the Sub Inspector) entertained doubts about the accused, whereupon a Gazette officer was called and upon searching the accused, it lead to a recovery of 4 kgs of opium. After doing the formalities of sealing and handing over the scene to an ASI, the FIR was registered by another ASI and the investigation was then handed over back to the Sub Inspector who had lodged the FIR, pursuant to

which a charge sheet was filed upon completion of the investigation.

6. It is of relevance to note that in this matter before the Hon'ble Supreme Court the Police Sub Inspector who lodged the FIR had no prior information about the accused coming to the spot with the contraband and this is the differentiating fact as compared to the instant case under consideration where the Investigating officer was informed by the Grand Hyatt Hotel about the parcel which the accused had wanted to courier to Abu Dhabi but the same was refused by the Courier Company as the parcel contained something suspicious and on opening the said parcel it was found to be containing small packets which packets was suspected to contain drugs. In these circumstances, it cannot be said that the informant was the Investigating Officer, but on the contrary the informant was the staff of the Grand Hyatt Hotel who had intimated the Investigating Officer about the parcel of the accused containing the packets suspected to be drugs. Hence, the Judgment in the case of **Mohan Lal (Supra)** will not come to the aid of the accused at this stage, more so, as his earlier bail application was rejected by the Hon'ble High Court, taking into consideration his statement recorded under Section 67 (c) of the NDPS Act.

7. On behalf of the accused reliance was placed on the Judgment of the Hon'ble Bombay High in the case of **Lawrence D'Souza V/s State of Maharashtra and another 1992 Cri. L.J. 399**. This Judgment is not applicable to the present case, as in the matter before the Hon'ble Bombay High Court, the accused was found in possession of the contraband substance, whereas, this is not so in the present case, given the fact that the contraband herein was in the parcel the accused had given to the hotel for the purpose of couriering to Abu Dhabi and it was not seized on searching the accused. In this respect, it will not be out of place to mention the Judgment in the case of **Superintendent, Narcotics ... vs R. Paulsamy AIR 2000 SC 3661**, wherein it was held as follows:-

" In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the public prosecutor unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by the learned single Judge at the stage of consideration for bail. The minimum which learned single Judge should have taken

into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned single Judge during bail stage regarding the compliance of the formalities mentioned in those two sections."

8. In these circumstances, I do not find any merit in the application for bail and, hence, the application stands dismissed.

Panaji

Dated: 10.10.2018

(Sherin Paul)
Additional Sessions Judge, Panaji