

2023 SCC OnLine Bom 1614

In the High Court of Bombay at Goa  
(BEFORE PRAKASH D. NAIK, J.)

Johnson Richard ... Applicant;

*Versus*

State of Goa as rep. by the Officer In Charge and  
Another ... Respondents.

Criminal Miscellaneous Application No. 497 of 2023 (Filing)

Decided on August 7, 2023

Advocates who appeared in this case:

Mr. K. Poulekar, Advocate for the Applicant.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for the  
Respondents.

The Order of the Court was delivered by

PRAKASH D. NAIK, J.:— The applicant is seeking bail in Cr. No. 14/2022 registered with ANC Police Station North Goa, for offences under Sections 22(c) and 21(b) of the NDPS Act.

2. The prosecution case is that on 27.08.2022 the staff of Anti Narcotic Police Station, Panaji, Goa along with two panchas conducted a narcotic raid at 'Besides Green Fingers Nursery', Calangute, Bardez, Porba Waddo, North Goa and apprehended the accused/applicant. He was found in possession of 40gms of MDMA, 60gms of Heroin and 50 gms Ecstasy powder, all worth Rs. 15,00,000/-. FIR was registered on 27.08.2022. The applicant was arrested on the same day and since then he is in custody.

3. Learned advocate for the applicant submitted that the applicant is in custody from 27.08.2022. Although the alleged contraband was seized on 27.08.2022, the CA report is not on record. There is violation of Rule 14 of the NDPS Rules. Under Rule 14 the report was required to be sent by the CFSL within 15 days from the date of receipt of samples. In the absence of the CA report the applicant cannot be compelled to remain in custody till the trial is over. The applicant is entitled for speedy trial. Chargesheet is filed. The applicant cannot be detained in custody for indefinite period.

4. Learned advocate for the applicant has relied upon the decision of the apex Court in the case of *Rabi Prakash v. The State of Odisha*<sup>1</sup> delivered on 13.07.2023 wherein the accused facing prosecution under the NDPS Act was directed to be enlarged on bail on the ground of long incarceration in custody.

5. Mr. Pravin Faldessai, learned Additional Public Prosecutor for respondent No. 1 submitted that the applicant was found in possession of contraband viz., 40gms MDMA, 60gm Heroin and 50gms of Ecstasy powder. Although CA report is not received, field test was conducted which indicated that the aforesaid drugs was found in possession of the accused. In view of rigors of Section 37 of the NDPS Act the applicant is not entitled for bail. No ground is made by the applicant to overcome the embargo under Section 37 of the NDPS Act. The applicant is not entitled for bail on the ground of alleged violation of Rule 14 of the NDPS Rules.

6. The application for bail preferred by the applicant before the Sessions Court, Panaji has been rejected vide order dated 09.05.2023.

7. The prosecution case as stated above is that the applicant was found in possession of the contraband as described hereinabove. There is no CFSL report on record. However, field test was done with a drug detection kit which gave positive results for MDMA, Heroin and Ecstasy. In view of Section 37 of the NDPS Act, the applicant is not entitled for bail.

8. Learned counsel for the applicant has relied upon the decision of the apex Court referred to hereinabove wherein bail was granted to the accused who was found in possession of Ganja which was recovered from a truck. The apex Court had considered the fact that the accused has been in custody for more than 3 and half years and hence it was observed that prolonged incarceration generally militates against most precious fundamental rights guaranteed under Article 21 of the Constitution and in such a situation the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of NDPS Act.

9. In the present case, the prosecution case rests on the possession of the contraband viz., MDMA, Heroin and Ecstasy powder. In the present case, field test prima facie determines the nature of the contraband found in possession.

10. NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 were brought into force on 23.12.2022. Rule 14 relates to Expeditious Test. It provides that the chemical laboratory shall submit its report to the Court of Magistrate with a copy to the investigating officer within fifteen days from the date of receipt of the sample. Provided that where quantitative analysis requires longer time, the results of the qualitative test shall be dispatched to the Court of Magistrate with a copy to the investigating officer within the said time limit on the original copy of Test Memo and in the next fifteen days the result of quantitative test shall also be indicated on the duplicate Test Memo and sent to the Court of Magistrate with a copy to the investigating officer.

11. The preamble of the aforesaid Rules indicate that in exercise of

the powers conferred by Section 76; read with Section 52-A; of the Narcotics Drugs and Psychotropic Substances Act, 1985, the Central Government makes the rules. The title of the Rules makes it clear that the Rules are relating to seizure, storage, sampling and disposal. Section 76 of NDPS Act provides that, subject to the other provisions of the Act, the Central Government may by notification in the official gazette, make rules for carrying out the purposes of the Act. The section also makes it clear that the Rules may provide for all or any of the matters referred to therein. The NDPS Rules, 2022 procedure regarding seizure and storage of seized material, designation of godowns, deposit in godowns, storage of seized material in godown, inspection of godown, application to Magistrate, samples to be drawn in the presence of the Magistrate, drawing the samples, quantity to be drawn for sampling, storage of samples, despatch of sample for testing, expeditious test, duplicate sample and remnants of samples, disposal, etc. Rule 14 relates to Expeditious Test. Assuming that the chemical laboratory has not submitted its report within stipulated time as envisaged under Rule 14, the applicant would not be entitled for bail. Section 37 of the NDPS Act provides that no person accused of offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on bond unless the Public Prosecutor is given opportunity to oppose the application for such release and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. In view of the rigors implicit under Section 37 of the NDPS Act, the applicant is not entitled for bail.

12. Hence, I pass the following order:—

ORDER

- (i) The criminal application (bail) No. 497 of 2023 (Filing) stands rejected.
- (ii) The concerned CFSL authority is directed to submit the CFSL report expeditiously within a period of three months from today.
- (iii) The application is disposed of.

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<sup>1</sup> Petition for Special Leave to Appeal (CrI.) No. 4169/2023