

2023 SCC OnLine Bom 1424

In the High Court of Bombay at Goa
(BEFORE M.S. KARNIK, J.)

Raju Lama, Presently lodged in Central Jail, Colvale

... Applicant;

Versus

State, Thr. Officer in Charge of Anti Narcotic Cell
Police Station, Panaji and Another ...
Respondents.

Criminal Application (Bail) No. 506 of 2023 (F)

Decided on July 17, 2023

Advocates who appeared in this case:

Mr. Galileo Teles, Advocate with Mr. A. Sail, Advocate for the Applicant.

Mr. Niklil Vaze, Additional Public Prosecutor for the Respondents-State.

The Order of the Court was delivered by

M.S. KARNIK, J.:— Heard learned Counsel for the applicant and the learned Additional Public Prosecutor for the respondent-State.

2. This is an application for bail for the offences punishable under section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*NDPS Act*, for short), registered by FIR no. 22/2022 dated 29.11.2020 of the Anti Narcotic Police Station, North Goa.

3. The applicant was arrested on 29.11.2020. At the time of arrest, it is alleged that the raiding party seized 2.5 kgs of charas which was in the dikky of a scooter which was parked by the applicant. The applicant is in custody for more than two years and nine months. The prosecution has cited sixteen witnesses.

4. Learned Additional Public Prosecutor, while opposing the application for bail, submitted that the prosecution proposes to examine nine witnesses. As of now, two witnesses have been examined and the third witness is under examination.

5. Learned counsel for the applicant submitted that the last date when the third witness was examined was on 23.03.2023 and since then there is no progress in the trial. The trial is likely to take some time to conclude. Learned counsel for the applicant relied upon the decision of the Supreme Court in *Rabi Prakash v. State Of Odisha* in Special Leave to Appeal No. 4169 of 2023 decided on 13.07.2023, to contend that the prolonged incarceration, generally militates against

the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(i)(b)(ii) of the NDPS Act.

6. The applicant is in my opinion, entitled for bail on the ground of prolonged incarceration. There are no criminal antecedents reported against the applicant. The likelihood of the applicant committing an offence of a similar nature may not arise.

7. Learned counsel for the applicant submitted that there has been a breach of the provisions of Section 57 of the NDPS Act. My attention is invited to the deposition of Pw.1- Harish Madkaikar, the Dy.SP, who has stated that the intimation under section 57 of the NDPS Act had stated that neither the search and seizure report were submitted by him. The report under section 57 was prepared by an Officer who was not part of the raiding party which conducted the search and seizure panchanama. It is the submission of the learned Additional Public Prosecutor that the Supreme Court in the case of *Sajjan Abraham v. State of Kerala*¹, has held that the noncompliance of section 57 is not fatal to the prosecution case. These are matters to be examined by the trial Court and any observations made by me shall not influence the trial court while deciding the trial.

8. The applicant, therefore, deserves to be released on bail, however, upon imposing some stringent conditions as the applicant is a resident of Himachal Pradesh. The application for bail is allowed. Accordingly, the following order is passed : _

ORDER

- (i) The applicant is directed to be released on bail in respect of CR. No. 22/2020 registered at the Anti Narcotic Police Station, upon furnishing a P.R. Bond of Rs. 1,00,000/- with one or two sureties in the like amount to the satisfaction of the learned trial Judge.
- (ii) The applicant shall attend the hearing of the case regularly on the dates fixed by the trial Court.
- (iii) The applicant shall not tamper with the evidence nor influence, induce, threaten or coerce the prosecution witnesses and shall not make any attempt to contact or intimidate them.
- (iv) The applicant shall not enter the State of Goa till the conclusion of trial except for attending the trial.
- (v) The applicant shall inform the trial Court as well as the Investigating officer his residential address and contact number while residing out of the State of Goa.
- (vi) The applicant shall report to the Police Station which is the nearest to his residence every alternate Saturday of the month commencing from 01.08.2023. Details of such Police Station be

furnished to the trial Court as well as the Investigating Officer.
9. The Bail Application stands disposed of.

¹ (2001) 6 SCC 692

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