



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 352 OF 2020

Hitesh Hemant Malhotra

Age : 39 years, R/a : Room

No.1703, 2nd Floor, Dosti

Vihar, Vartaknagar, Thane.

(Thane Central Jail, Thane) ...Applicant

(Orig. Accused)

V/s.

State of Maharashtra

Through Vartak Nagar

Police Station, ThaneRespondent

Mr. Suhas Oak i/by. Mr. Vinod Utekar,

Advocate for the applicant.

Ms. Prajakta P. Shinde, APP for State.

CORAM :- SANDEEP K. SHINDE, J.

RESERVED ON : 1ST DECEMBER, 2020.

PRONOUNCED ON 01 DECEMBER, 2020.

JUDGMENT :

1. Heard.

2. On 8.6.2019 on personal search of the applicant, 10 square pieces of papers containing LSD drops of LSD solutions were found and recovered. Subsequently, on the same day, in house search, 13 pieces of brown colour papers each admeasuring 1/1 cm in size containing LSD drops of LSD solution were recovered. Additionally, 970 gms (570+400 gms) of charas, kept in the cupboard was recovered. Applicant was apprehended on 8.6.2019 for the offences punishable under Sections 8(c), 20(b), 22(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act ('NDPS Act' for short) in connection with Crime No.153/2019 is registered with Vartak Nagar Police Station, Thane.

3. Applicant is seeking bail on the ground that quantity of contraband i.e. LSD and charas allegedly found and recovered from

the person of applicant and his house was less than the, 'commercial quantity', and therefore rigors of Section 37 of the NDPS Act, are not applicable to the facts of this case. Besides, it is contended that, applicant has no criminal antecedents. Also submitted that, the investigation is over and applicant's presence for the trial can be secured by imposing appropriate conditions.

4. Before appreciating the submissions advanced by the Counsel for the applicant, it may be stated that;

. LSD is sold on the street in small tablets (micro dots), capsules or gelatin squares. In its pure state, LSD is white, odourless substance. However, LSD is so potent that an effective small dose of pure drug, is virtually invisible. As a result, it is usually diluted in other materials.

. In this case, drug was found in the form of drops, dried onto 23 pieces of papers.

5. It may be stated that, at serial no.133 of Table appended to the Act, small quantity in relation to LSD is 0.002, whereas, commercial quantity is 0.1 gms and sofar as charas is concerned, commercial quantity is 1 kg.

6. Learned Counsel for the applicant would submit that, total weight of 10 pieces of paper containing LSD drops, found on the person of the applicant was 140 milligrams. However, 13 pieces of papers containing drops of LSD solution allegedly found and recovered, from applicant's house, it's weight has not been stated either in panchanama, nor it could be found in the chargesheet. Relying on the CA report, it is contended that, 'net' weight of the drops of

LSD solution on the 23 papers (Exhibit No.1/1, 1/2, 1/3 and Exhibit No.(2)), as found was 0.4128 milligram which is less than commercial quantity i.e. 0.1 gm. Counsel would therefore argue that, weight 'LSD drops' and 'charas' (970 gram), allegedly recovered was less than commercial quantity and therefore there is no impediment in releasing the applicant on bail, in as much as, rigors of Section 37 are not applicable to the facts of this case.

7. On the other hand, learned APP has supported the order passed by the learned Sessions Court and also relied on the judgment of the Apex Court in the case of **Hira Singh & Anr. V/s. Union of India** (Criminal Appeal No. 722/2017).

8. I have perused the First Information Report, Recovery Panchanamas and Chemical

Analyser's report. At the outset, it may be stated that the most common form of LSD is drop of LSD solution dried onto piece of paper or gelatin sheet, pieces of blotting papers which releases the drop when swallowed/consumed. In this case, drug was found in the form of drops dried onto 23 pieces of papers. Thus, process of drying LSD solution on a piece of paper, merely facilitates consumption of drug. This process neither changes the substance of the drug or its chemical composition. It is argued by the State, that since dried LSD drops of LSD solution, cannot be segregated or separated from the papers, it amounts to a 'mixture' and therefore the weight of the paper is to be counted with LSD dots for determining the quantity of drug which was more than 0.1 gram. The learned APP relies on Entry-239 of the Table and Footnote-(4)

appended thereto of the NDPS Act Entry
No.239 and Footnote-(4) reads as under :

239. Any mixture or preparation that of
with or without a neutral
material, of any of the above drugs.

Lesser of the Small quantity between the
quantities given against the respective
narcotic drugs or psychotropic substances
mentioned above forming part of the mixture.

Lesser of the Commercial quantity between the
quantities given against the respective
narcotic drugs or psychotropic substances,
mentioned above forming part of the mixture.”

“4. The quantities shown in column 5 and column
6 of the Table relating to the respective drugs
shown in column 2 shall apply to the entire
mixture or any solution or any one or more
narcotic drugs or psychotropic substances of
that particular drug in dosage form or isomers,
esters, ethers and salts of these drugs,
including salts of esters, ethers and isomers,
wherever existence of such substance is
possible and not just its pure drug content.”

9. In my view, though after swallowing
piece of paper, which causes release of drug
but since that paper only carries drug and
facilitates its consumption, the paper with
LSD drops, as a whole, is neither
“preparation”, within the meaning of Section

2(xx), nor a “mixture” within the meaning of of the NDPS Act. So far as the judgment of the Hon’ble Apex Court in the case of Hira Singh (supra) is concerned, issue therein was, whether mixture of narcotic drug or psychotropic substances with one or more neutral substances, quantity of neutral substances can be excluded while determining the small or commercial quantity of narcotic drug and psychotropic substances. However herein, the papers containing dried LSD drops of LSD solution, not being a mixture, and the paper being not a neutral substance, judgment of the Apex Court, has no application to the facts of this case.

9. The learned Judge, as it appears from the impugned order, has accounted weight of papers “while calculating and determining quantity of the LSD as a “commercial quantity”. In addition, while holding

quantity of charas recovered from the applicant was 'commercial quantity', is equally incorrect because charas allegedly recovered from the applicant was 970 gms i.e. less than 1 kg.

10. Thus, in consideration of the facts of the case, the findings of the learned Judge that weight of the paper containing dried LSD drops of LSD solution is required to be accounted while determining its quantity; whether small or otherwise is incorrect. In this case, the Chemical Analyst's report, shows quantity of LSD drops solution was 0.4128 milligrams, which was below 0.1 gm of commercial quantity. Therefore, rigors of Section 37 of the NDPS Act, are not applicable to the facts of this case.

11. Herein, the applicant has no criminal antecedents. He is in custody since June,

2019. Therefore, in the facts of the case, the applicant is admitted to bail on following terms and conditions :

ORDER

(i) The applicant arrested in Crime No.153/2019 registered with Vartaknagar Police Station, Thane, shall be released on bail on executing PR bond for the sum of Rs.1,00,000/- (Rs. One Lakhs only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer between 11:00 to 1:00 p.m. on second and fourth Monday of each month, commencing from December, 2020 till the charge is framed.

(iii) The applicant shall deposit his

passport with the Investigating Officer within two weeks from his release from jail.

(iv) The applicant shall furnish particulars of his permanent residential address and contact details to the Investigating Officer.

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The application is accordingly allowed and disposed of.

8. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting

bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)