

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2816 of 2021

Novafor Samuel Inoamaobi .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Ms.Ashwini Achari with Taraq Sayed i/b Advait Tamhankar for the applicant.

Mrs.A.A. Takalkar, APP for the State.

PSI Ajale V.M from ATS, Thane unit.

Mr.Vaibhav Deshpande from Regional Forensic Science Laboratory, Aurangabad as Asstt. Director.

CORAM: BHARATI DANGRE, J.

DATED : 10th AUGUST 2022

P.C:-

1 The applicant came to be arrested on 23/10/2020, and on investigation, the charges against him came to be crystallized in NDPS Case No. 312/2021.

2 The applicant is a Nigerian National and on specific information received, that a Nigerian National would be coming on the given spot at the given time to sell cocaine, a team was formed by the ATS and raid was conducted. The action of the applicant was alleged to be suspicious, and on conducting his personal search, the alleged contraband purported to be cocaine

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concealed in blue coloured plastic bag weighing around 116.19 gms and a transparent plastic pouch containing Saffron coloured heart shape pills weighing around 40.73 gms and some pink coloured Ecstasy tablets weighing around 4.41 gms were recovered. He was shown to be arrested on 23/10/2020 and FIR No.7/2020 was lodged.

3 An examination report was received from the Directorate of Forensic Science Laboratory, State of Maharashtra, Home Department, Kalina dated 8/2/2021 when the seized material alleged to be contraband, was forwarded for analysis. Exhibit-1, a white powder in a press-closed polythene bag was reported to have contained Lidocaine and Tapentadol and pink colour tablets were found to be Caffeine. The aforesaid documents in form of “Examination Report” dated 8/2/2021 was held to be sufficient to charge the applicant u/s.8C, 20, 22 of NDPS Act.

The report was issued under the signature of Assistant Chemical Analyser to Government, Forensic Science Laboratory, Home Department, Maharashtra State.

4 After the expiry of more than one year, the Assistant Director realized the mistake committed by him while issuing his report dated 8/2/2021 and he addressed a communication to the Sr. PI, ATS, Thane, where he informed that while issuing the report, he had committed a mistake in submitting, that Exhibit-1

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falls under NDPS Act, 1985. It is clarified that this was a typing mistake and he expressed his apology. He issued a corrigendum dated 04/08/2022 along with the report which reads as under :-

उपरोक्त संदर्भ क्र. १ मध्ये विचारलेल्या प्रश्नांच्या अनुषंगाने खुलासा करितो की उपरोक्त नमूद संदर्भ क्र. २ मधील प्रकरणाच्या अहवालाच्या निष्कर्षात (Result Of Analysis) मध्ये एकूण चार वाक्यात निष्कर्ष आहे. परंतु यापैकी अनुक्रमे दुसरे वाक्य 'Exhibit no.1 falls under NDPS Act 1985' हे माझ्याकडून अहवाल टंकलेखन करित असतांना अनवधानाने टंकलेखित झाले आहे. याबद्दल मी पूर्ण गांभीर्याने दिलगिरी व्यक्त करतो.तरी सदरील संदर्भित अहवाल दुरुस्त करून पुढील प्रमाणे वाचण्यात यावा हि नम्र विनंती.

*Lidocaine and Tapentadol are detected in exhibit no. (1).
Tapentadol and Caffeine are detected in exhibit no. (2).
Caffeine is detected in exhibit no. (3).*

The above report placed on record by the learned APP is marked "X" for identification.

5 In the wake of the aforesaid corrigendum, it is clear that the substance which was alleged to be contraband and recovered from the applicant at the time when the raid was conducted, do not fall within the purview of The Narcotic Drugs and Psychotropic Substances Act.

6 Needless to state that the applicant deserve his release on bail.

7 The error, which is sought to be explained and projected as a typing error, is a blatant mistake, which is admitted by the Assistant Director after more than a year, of incarceration

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of the applicant. It deserve to be looked at seriously, but for the said report, the applicant could not have been detained.

8 Liberty of an individual is of paramount importance and it is the fulcrum of the Indian democracy. Recognized as a fundamental right, enshrined in Article 2, it is available to every person, citizens and foreigners alike.

The incarceration of the applicant, with the above clarification, has therefore, become unlawful, as, but for this report, no offence could have been made out against him.

9 The State Authorities, though supreme and in-charge of the law and order situation, which includes implementation of various statutes intended to achieve specific purpose and particularly a special statute like NDPS are expected to behave in a responsible manner.

Though the learned APP attempt to justify by stating that the present applicant is a Nigerian citizen, and he has antecedents to his credit and one of which, is under the NDPS Act, merely because of the same, he cannot be incarcerated as the State is expected to follow due procedure while depriving even a foreign national of his liberty.

In the aforesaid circumstances, let the State Government through the Home Department come up with a proposal as to how it wants to compensate the applicant for realizing that his incarceration was unnecessary as the raid did not

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lead to recovery of any contraband/psycotropic substance covered under the NDPS Act.

Let this order be brought to the notice of the Addl. Secretary of the Home Department so as to outlay the manner in which it proposes to compensate the applicant or else, this Court would determine the quantum of compensation, as it deems fit.

Let the learned APP communicate this order to the Addl. Chief Secretary, Home Department.

List on 12/8/2022 on Supplementary Board.

(SMT. BHARATI DANGRE, J.)