2026 INSC 1245

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.5416 of 2026
[@Special Leave Petition(Crl.) No.18768 of 2026]

State of Goa **...Appellant**

Versus

Agniv Sengupta **...Respondent**

O R D E R

Leave granted.

2. The appeal is filed by the State of Goa against the order of the High Court granting bail to the respondent, who was the accused in a case registered as FIR No.4 of 2025 at Police Station Anti Narcotic Cell, North Goa. The respondent allegedly was found in possession of 50.03 grams of cocaine and 15.04 grams of MDMA/Ecstasy recovered from the room/flat No.106, he occupied in Helen Oasis, Vagator, Goa. The room occupied by the 2nd respondent was an Air-B&B facility and the search was conducted following all formalities, in the presence of Panchas and after first detaining the respondent from the basement and leading him to the room occupied by him. The

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respondent having refused to hand over the keys of the room, the duplicate keys were obtained from one Mr. Jerry D'Souza, who was managing the Air-B&B facilities. Mr. Jerry D'Souza was also present when the search was conducted and recovery made in the presence of independent Panchas. A video recording of the search conducted was also carried out by the investigating team.

3. Before the High Court, it was argued that the respondent was apprehended two days back and was subsequently taken to the room after the contraband was planted. It was also contended that he had been tortured in the Police Station and a burn injury was inflicted on his hand. While contending that he had never been in occupation of the room, it was also argued that when the police had first talked with the Manager of the facility, Mr. Jerry D'Souza and then detained the respondent from the basement, there was sufficient time for Mr. Jerry D'Souza to plant the contraband in his room.

4. We heard Sri Omkar Jayant Deshpande, AOR for the State and Ms. Sana Raees Khan, learned Counsel for the respondent.

5. The AOR for the State argues that the High Court strangely thought it fit to grant bail on the ground that the Manager of the facility had unhindered access to the room and hence *prima facie* there is reason to believe that the respondent had not committed the said offence as alleged. If such a reasoning is accepted, then any recovery made from a hotel or a rental facility cannot be pinned on the person occupying the room or the facility. Since every hotel has an alternate key with the management, which is also used; even when in occupation, in the absence of the occupants for cleaning purposes, unless specifically prohibited by the occupants.

6. The learned Counsel for the respondent specifically pointed out the counter affidavit filed by the respondent and asserted that the respondent was framed. The second respondent was taken into custody, tortured and then taken to the room where the contraband was planted. It is also argued that even if the story of the prosecution is believed, the apprehension was made from the basement of the Air-B&B facility. There is nothing to show that he had

been occupying room/flat No.106 in the facility. It is contended that Mr. Jerry D'Souza had a lease agreement of the premises and is in occupation of the same and not the respondent.

7. We agree with the learned Counsel for the State that if the reasoning adopted by the High Court is accepted, then any recovery made from a hotel room cannot be pinned on the occupant of the said room. We have also looked at the counter affidavit, which according to us demolishes the case set up by the respondent. The FIR produced along with the appeal and the search warrant produced as Annexure 2 in the counter affidavit indicates the Raiding Officer having intimated his superior on 22.01.2025 about a reliable information of narcotic activities carried on by the respondent, who is staying at the Air-B&B facility at Helen Oasis in Room/Flat No.106. The Raiding Officer had obtained the permission of the superior officer to conduct house search as also obtained the seal to secure the contraband.

8. The seizure report was made in the presence of the Panch witnesses; Industries Inspector and a LDC who accompanied the raiding team as also the

Manager of the facility, Mr. Jerry D'Souza, which is produced as Annexure 3. Annexure 4 is the medical examination report of the accused on his arrest, which indicates a burn injury on the forearm, which was stated to have been caused with a lighter. Though the exact age of injury could not be determined, the doctor opined that it could have occurred two days back. There was nothing stated by the respondent as to the injury having been inflicted by the police and the entire story set up of an arrest two days back, plant of the narcotics in the room and a bogus raid conducted *prima facie* does not impress us.

9. Insofar as the occupancy of the premises Annexure 6 Leave and License Agreement has been projected. The owner of the premises had licensed it to Mr. Jerry D'Souza who had specifically taken it for commercial purposes. The agreement was dated 01.09.2024 and was applicable for a period of 7 months and it specifically indicates the licensee being authorized to put the premises for commercial use on daily basis whereas he would pay a monthly fee to

the owner. The lease agreement though shows the facility having been leased out by Mr. Jerry D'Souza, the specific contention of the police as corroborated by the Statement of Mr. Jerry D'Souza is that he had rented out the premises to the petitioner from 17.01.2025 to 26.01.2025. It is within the period of the said renting out and also within the license period that the apprehension and recovery of contraband was made from the premises.

10. We find absolutely no reason to sustain the order granting bail and set aside the order passed by the High Court impugned herein. We direct the respondent to surrender within a period of three weeks from today, failing which the respondent shall be apprehended and produced before the jurisdictional court for taking the said person into judicial custody, subject only to the orders passed by the said court for custody of police, if so required.

11. The appeal stands disposed of.

12. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
NOVEMBER 16, 2026.