

Harish Joshi vs.directorate of Revenue Intelligence

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Court : Delhi

Decided On : Jan-07-2019

Appellant : Harish Joshi

Respondent : Directorate of Revenue Intelligence

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

07. h January, 2019 CRL. APP. 1005/2018 HARISH JOSHI

... Petitioner

versus DIRECTORATE OF REVENUE INTELLIGENCE Respondent
Advocates who appeared in this case: For the

... Petitioner

: For the Respondent : Mr. Colin Gonsalves, Sr. Advocate with Mr. Vikas Gupta,
Mr. Vipin Kalra and Mr. Sohil Sharma, Advs. Mr. Satish Agrawal, Spl. PP for DRI
CORAM:-

"HONBLE MR JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV
SACHDEVA, J.

Crl.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 1.
Appellant has filed the present appeal impugning judgment dated 01.09.2018
whereby appellant has been held guilty of an offence under Section 21 (c) and 29

of The Narcotic Drugs and Psychotropic Substances Act, 1985 has been sentenced to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs. One lakh for each of the offences and in default to further undergo Rigorous Imprisonment for a period of three months.

2. The case of the prosecution is that intelligence was gathered that a person would come in a TATA Indica Car carrying Narcotic Crl.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 Page 1 of 6 drugs concealed in a suitcase which was to be transferred to another person opposite DLF Golf Course, Gurgaon at about 06.00 pm on the same day. It is alleged that a raiding team of DRI officers and the witnesses left for the designated place of delivery of the drugs and Surveillance was mounted near DLF Golf Course.

3. At about 06:30 pm, a TATA Indica Car was spotted near the designated place of delivery but the vehicle did not stop there and kept moving. The officers of DRI followed the said car which after some time entered into a lane and stopped near an elderly person, who seemed to be waiting for the said car. One person alighted from the car and started talking to the elderly person. Officers of DRI tried to intercept the said Indica car and to apprehend the persons. The person who had come out of the car ran away into a nearby lane. The elderly person got into the Indica car which took a U turn and sped away at a high speed.

4. The DRI team chased the car but they could not overtake it due to heavy traffic. The car was finally intercepted and forced to stop opposite Shiv Murti, near Mahipal Pur, New Delhi at about 07:50 pm.

5. On being asked, the driver of the car opened the boot (dickey). A black colour zipper stroll suitcase was found in the dickey. The elderly person who had boarded the car is the appellant herein. Initially the occupants of the car showed ignorance about any Crl.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 Page 2 of 6 Narcotic drug. The appellant is alleged to have admitted that the suitcase contained about 5 Kg of Heroin.

6. It is alleged that notice under Section 50 of NDPS Act was served upon the occupants of the car and they stated that they did not require presence of the

Gazetted Officer or Magistrate at the time of their personal search or search of the Tata Indica car and agreed to the search being carried out by the DRI officers.

7. As per the prosecution, since the place where car was intercepted was not safe for conducting search and other proceedings, the Indica Car and the three persons were brought to the DRI Office at CGO Complex Delhi. Search of the Indica Car resulted into a recovery of one black colour zipper trolley suitcase. No contraband was recovered from the personal search of the three occupants. Old clothes were kept in the suitcase. On removing the base fabric of the suitcase, a sun mica sheet was found affixed and in between the sun mica sheet, five packets wrapped in transparent tape were found. The packets were found to contain yellowish granules/ powder, on being tested with the help of UN Field Testing Kit, they tested positive for Opium Alkaloids. Total weight of all five packets was found to be 4.863 Kg.

8. The trial court in the impugned judgment has held the appellant guilty of having committed the offence under Section 21 (c) and 29 of the NDPS Act, 1985. Crl.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 Page 3 of 6 9. Learned counsel for the appellant has contended that the trial court has erred in not appreciating the evidence correctly. It is contended that the appellant was not arrested as alleged by the prosecution but was picked up from his residential complex by the DRI staff. It is alleged that this illegal arrest was widely reported by the media in Gurgaon. It is further contended that there is no independent witness examined by the prosecution to show the manner of arrest and the search and seizure of the vehicle from which the alleged contraband is stated to have been recovered.

10. It is contended that the driver who was the most crucial witness of arrest, search and seizure has not been examined by the prosecution, despite being cited as a witness. Even the punch witnesses in whose alleged presence the search and seizure had taken place have not been examined as witnesses. It is contended that the arrest and seizure of the contraband is highly suspect. Further it is contended that the seized article changed from Opium Alkaloids to Heroin during trial and as such there is a possibility of tampering which could not be ruled

out.

11. Further, it is contended that the entire story of the prosecution is untenable as the prosecution case begins with secret information alleged being received that consignment was to be delivered at DLF, Golf Course, Gurgaon at about 6.00 PM. This information is alleged to have been received at 3.00 PM on the same day. It is contended that the prosecution witnesses particularly the person who is stated to have CrI.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 Page 4 of 6 provided the TATA Indica Car has stated that the place of delivery of the suitcase was Radisson Hotel, Mahipal Pur, Delhi. It is contended that this clearly falsifies the story of the prosecution that intelligence information was received that contraband was to be delivered at DLF, Golf Course, Gurgaon and Surveillance was kept at DLF, Golf Course, Gurgaon.

12. Further it is contended that the story of the prosecution is completely implausible and does not seem to reason as to why the appellant who was not in the TATA Indica Car when it was allegedly intercepted by the DRI Officers would sit in the car so as to be apprehended later in the car.

13. Further it is contended that there is breach of the mandatory provisions of Section 50 of the NDPS Act. Further as per the prosecution the vehicle was taken to DRI Office prior to search and there is no explanation rendered as to why even there a gazetted officer or a Magistrate was not asked to join at the time of the search. It is submitted that as section 50 has been violated the petitioner is liable to be acquitted. Reliance is place on the judgment of the Supreme Court dated 27.04.2018 in Criminal Appeal No.273 of 2007 titled Arif Khan Versus State of Uttrakhand.

14. Learned Senior Counsel contended that the petitioner was also granted bail by this Court by judgment dated 16.01.2009 in BAIL APPLN. No.2449/2008 and it is not the case of the prosecution that CrI.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 Page 5 of 6 the appellant has been involved in any other case pending trial. It is further contended that the Appellant is 75 years of age and is 100% visually impaired.

15. Appeal has already been admitted and there is no likelihood of the appeal being taken up for final disposal shortly.

16. Without commenting on the merits of the case and keeping in view the totality of the facts and circumstances, I am satisfied that the appellant has made out a case for grant of suspension of sentence pending consideration of the appeal.

17. Accordingly, on appellant furnishing a bail bond in the sum of Rs. 1,00,000/- with two sureties, each having immovable property in Delhi, of the like amount to the satisfaction of the trial court, the remaining sentence of the appellant shall remain suspended during pendency of the present appeal. The appellant shall not leave the country without prior permission of this Court and shall surrender his Passport to the Investigating Officer, if not already done so.

18. Application is disposed of in the above terms.

19. Order dasti under signatures of the Court Master. JANUARY07 2019 rs SANJEEV SACHDEVA, J CrI.M.(Bail) 1520/2018 (suspension of sentence) IN CRL.A. 1005/2018 Page 6 of 6