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Court : Patna

Decided On : Aug-09-2007

Judge : Dharnidhar Jha, J.

Acts : Narcotics Drugs Psycotropic Substances Act - Sections 36(3), 37 and 50

Appeal No. : Cri. Misc. No. 1102 of 2007

Appellant : Dipak Kumar Singh @ Dipak Kumar

Respondent : The State of Bihar

Disposition : Petition dismissed

Prior history : Dharnidhar Jha, J. 1. Heard. The petitioner was found in possession of 1 pond of heroin as per the first information report as also the seizure memo. The allegation is that police, having learnt that some persons were likely to deal in heroin in Gandhi Maidan, had put itself on wait and then the seizure was made from the petitioner and another accused Amit Kumar. 2. The contention is that admittedly there was no compliance of Section 50 of the N.D.P.S. Act and in the light of State of Punjab v.

Judgement :

Dharnidhar Jha, J.

1. Heard. The petitioner was found in possession of 1 pond of heroin as per the first information report as also the seizure memo. The allegation is that police, having learnt that some persons were likely to deal in heroin in Gandhi Maidan, had put itself on wait and then the seizure was made from the petitioner and another accused Amit Kumar.

2. The contention is that admittedly there was no compliance of Section 50 of the N.D.P.S. Act and in the light of *State of Punjab v. Balbir Singh* reported in : (1999)6SCC172 the seizure of one pound of heroin from the possession of the petitioner could not be of any significance and in fact it could not be said to be a seizure and as such the petitioner should be admitted to bail. It was further contended by citing before me 1995 (2) P.L.J.R. 387 *Satyendra Sah v. The state of Bihar* that the non-compliance with the mandatory provision of Section 50 N.D.P.S. Act could be considered at the time of hearing of the petition for bail and the accused has to be admitted under the facts as in the present case.

3. The relevant provision is Section 37 of the N.D.P.S. Act which lays down that if the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail, such accused may be released from custody. The provision of Section 36(3) of the N.D.P.S. Act creates power of releasing a person/accused of committing any offence under the Act in addition to the power which the High Court enjoys under the Code of Criminal Procedure. On considering the provision of Section 37(ii) of the N.D.P.S. Act one could come to a conclusion that for acting under that particular provision two criteria have to be fulfilled (i) that there were reasonable grounds for believing that the accused was not guilty of such offence and (ii) that he was not likely to commit any offence while on bail. As regards the terms 'reasonable grounds for believing' this could be inferred by the court on the basis of the material which could be presented before it through various documents including of investigation", reasonable ground for believing' vastly differs, in my opinion, from the drawing of inference about the guilty/innocence of an accused on appreciation and marshalling of evidence adduced during the course of the trial. At the stage of deciding the question of releasing or not releasing an accused on bail the criteria of admissibility or relevance of evidence

on which a court could be asked to deliver its verdict regarding the proof of the charges could not be of that standard as is required for proving a charge. At the time of writing the judgment after the conclusion of the trial the court has to consider and decide the admissibility/ relevance of the evidence produced before it. At that stage the standard of reading the evidence is from an angle of seeking the proof of the charges beyond all reasonable shadow of doubt. While a court is considering the question of bail, what it has to be satisfied about is that 'there are reasonable grounds for believing'. Proof beyond all reasonable doubt is based on inference on consideration of admissible and relevant evidence raising an inference heightening the probability that the accused is the persons to have committed the offence. At the stage of 'reasonable ground for believing that he is not guilty of such offence' the material could not be read and considered with the same standard of appreciation and proof as is required at the time of seeking the proof of the charges.

4. A reading of *State of Punjab v. Balbir Singh* (supra) may point out that the primary question before the Constitution Bench of the Apex Court which was referred to by some of the Benches of the Court was whether the evidence on search and seizure in a case under the N.D.P.S. Act where Section 50 of the said Act was attracted, was admissible and could be utilised for recording the conviction of a person without complying with it fully. The question was not whether the non-compliance of the provision of Section 50 of the Act could entitle an accused to bail. Even the case of *Ali Mustafa Abdul Rahman Mossa v. State of Karnataka* : AIR 1995 SC244 was a case in which the admissibility of the evidence and conviction of the accused was being considered. In my considered view a proceeding of bail could not be such a stage where the admissibility of search and seizure could be taken into account. The court merely has to satisfy that there was search and seizure and there was recovery of some narcotic drug or substance.

5. I have already noted that the power of the Court to release an accused under Section 37 of the N.D.P.S. Act is dependant on a finding to be recorded by it (i) that the accused had not committed such offence and (ii) that there was no likelihood that he will commit such offence while on bail. This is very difficult for any court to say that an accused may not be committing any offence if he is released on bail,

even if a court goes on to say that the accused did not appear guilty of committing any offence. The two findings which have to be clearly recorded by a court directing release of an accused appear to me a sine qua non for exercising the jurisdiction of the court under Section 37 of the N.D.P.S. Act. I do not find any basis to say that the accused does not appear committing the offence and further that if released on bail, he will not be indulging in similar offence. In the light of the above discussion of the provision of law I do not find any merit in the present petition and the same is dismissed.

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