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Sanjay Kumar Verma Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-13-2006

Reported in : 2006CriLJ1426

Judge : Ravindra Singh, J.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 8, 18 and 21

Appeal No. : Cri. Misc. Bail Appln. No. 12249 of 2003

Appellant : Sanjay Kumar Verma

Respondent : State of U.P.

Advocate for Def. : A.N. Mulla, AGA

Advocate for Pet/Ap. : S.K. Mishra, ;Dileep Kumar and ;Rajeev Gupta, Advs.

Disposition : Appeal allowed

Judgement :
ORDER

Ravindra Singh, J.

1. Heard Sri Dileep Kumar, Sri Rajeev Gupta and Sri S.K. Mishra learned Counsel for the applicant and the learned A.G.A.

2. This application is filed by the applicant Sanjay Kumar Verma with a prayer that he may be relearsed on bail in case crime No. 64 of 2003 under Section 18/21 N.D.P.S. Act., P.S. Jaspura, District Banda.

3. According to prosecution version the first informant S.I. Kamal Yadav got an information that the applicant had gone to Banda to purchase smack (Brown sugar). Therefore, the first informant along with some other police personnel proceeded towards the Banda where an information was given by Mukhvir Khas that the applicant was moving in Banda city, in a white maruti car and he was having smack. The Maruti Car bearing registration No. UP 32-W-2594 of the applicant was intercepted. An attempt was made to collect the public witnesses but nobody was ready to become the witness. The applicant was arrested on 8-5-2003 at 7.55p.m. At that time the applicant was driving a maruti car. He disclosed his name and he was asked to give his search and he was apprised about his right that search may be given by him before a Gazetted Officer or the Magistrate, but he he stated that the search may be given before any Gazetted Officer. Therefore, through R.D. Set information was given to C.O. (City), Banda. On that information Sri Subhash Chandra Shakya C.O. (City), Banda came at the place of occurrence and at about 9.00 p.m. the search of the applicant was made and from a cavity of the Maruti car he took out two polythene bags containing brown powder, by its smell it was detected as smack. The applicant confessed that he was taking the recovered contraband to Lucknow and Barabanki for the purpose of sale. The recovered contraband was weighed. In the first packet it was found 470 grams and in the second packet it was found 535 grams and from each the packets 5 grams smack was taken and each was kept and sealed in two different match boxes. According to prosecution version 1005 grams smack was recovered from the possession of the applicant. According to prosecution both the match boxes were sealed on the spot and the remaining recovered contraband was also sealed.

4. It is contended by the learned Counsel for the applicant that in the present case for the purpose of sample 5 grams recovered contraband was taken from the each packet and packed and sealed it two different match boxes. One match box was having the brand of Chameli and the second match box was having the Hurricane brand and according to Chemical Analyst report only 1970 mg heroine was found

in a sample kept in the hurricane match box and 1950 mg heroine was found in a second sample kept in Chamely brand match box. According to prosecution version in each match boxes the recovered contraband was kept. According to prosecution version the total weight of sample sent for chemical analysis was 10 grams, but according to the report the weight of total sample was found 3.920 grams. There is a difference of 6.080 gms. There is a variation in the weight of the recovered sample and it is not a minor difference because there is a difference of more than 6.00 grams. It is a major difference. In such a major difference no reliance can be placed on the prosecution store, because it is demolishing the factum of the recovery and sampling the same. It is further contended that according to prosecution version the recovered contraband was smack, but according to Chemical Analyst report dated 27-6-2003' it was found heroine which belies the whole prosecution story. It shows that the sample of the recovered contraband was not sent for the Chemical Analyst. The reliance has been place on the decision of the Apex Court of the case of 'Rajesh Jagdamba Avasthiv. State of Goa 2005(51) ACC 315: AIR 2005 SC 1389.' In this case from the shoe of right foot 100 grams charas and from the shoe of left foot 115 grams charas was recovered. The recovered charas was packed and sealed in two envelops A and B, but according to Chemical Analyst report 98.16 grams charas was recovered from envelop A in which according to prosecution version 100 grams charas was packed and sealed and from envelop B 82.54 grams charas was found in which according to prosecution version 150 grams charas was packed and sealed. The accused was convicted by the trail court as well as by the High Court, but the accuse was acquitted by the Apex Court by observing in para 12 and 13 of the Judgment, which is as under:

We do not find it possible to uphold this finding of the High Court. The appellant was charged of having been found in possession of charas weighing 180.70 gms. The charas recovered from him was packed and sealed in two envelopes. When the said envelopes were opened in the laboratory by Junior Scientific Officer, P.W. 1. He found the quantity to be different. While in one envelop the difference was only minimal, in the other he difference in weight was significant. The High Court itself found that it could not be described as a mere minor discrepancy. learned Counsel rightly submitted before us that the High Court was not justified in

upholding the conviction of the appellant on the basis of what was recovered only from envelop 'A' ignoring the quantity of charas found in envelope 'B'. This is because there was only one search and seizure, and whatever was recovered from the appellant was packed in two envelopes. The credibility of the recovery proceedings is considerably eroded if it is found that the quantity actually found by P.W. 1 was less than the quantity sealed and sent to him. As he rightly emphasized, the question was not how much was seized, but whether there was an actual seizure and whether what was seized was really sent for chemical analysis to P.W. 1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful.

This is not all. We find from the evidence of P.W. 4 that he had taken the seal from PSI Thorat and after preparing the seizure report, panchnama, etc. he carried both the packets to the police station and handed over the packets as well as the seal to inspector Yadav. According to him on the next day, he took back the packets from police station and sent them to P.W. 3, Manohar Joshi, Scientific Assistant in the Crime Branch, who forwarded the same to P.W. 1 for chemical analysis. In these circumstances, there is justification for the argument that since the seal as well as the packets were in the custody of the same person, there was every possibility of the seized substance being tampered with and that is the only hypothesis on which the discrepancy in weight can be explained. The least that can be said in the facts of the case if that there is serious doubt about the truthfulness of the prosecution case.

5. It is opposed by the learned A.G.A. by submitting that there is minor discrepancy in the weight of the sample. According to prosecution version according to public analyst report due to such minor difference the prosecution story cannot be demolished. It is further contended that there is minor difference between the smack and the heroin. The applicant has himself disclosed that he was having a smack. Therefore, in the recovery memo the recovered contraband was mentioned as smack (brown sugar), but according to Public Analyst report it was confirmed that the alleged recovered contraband was heroine and there is no other discrepancies in the prosecution story. Therefore, the applicant is not entitled for bail.

6. Considering the facts and the circumstances of the case and the decision of Apex Court as referred above, in the present case the difference in the weight of recovered contraband mentioned in the recovery memo and in the report of Public Analyst is too much. It is not a minor difference because in a sample of 10 grams contraband there is difference of more than 6 grams. It is major difference. It will have its own adverse. It is not proper to record any finding at this stage. The same shall be considered at the stage of the trial on the basis of the evidence. According to prosecution version the recovered contraband was smack (brown sugar), but according to Public Analyst report it was found heroine. According to the N.D.P.S. Act both the contrabands are separately defined and both are not the same. Therefore, without expressing any opinion on the merits of the case the applicant is entitled for bail.

7. Let the applicant Sanjay Kumar Verma involved in case crime No. 64 of 2003, under Sections 8/21/N.D.P.S. Act, P.S. Jaspura, District Banda be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned.

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