

Bhanu Pratap Vs. State

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Court : Allahabad

Decided On : Mar-12-1991

Reported in : 1992CriLJ1639

Judge : J.K. Mathur, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 20, 42 and 43

Appeal No. : Criminal Misc. Case No. 567(B) of 1991

Appellant : Bhanu Pratap

Respondent : State

Advocate for Pet/Ap. : B. Saloman, Adv.

Disposition : Application dismissed

Judgement :
ORDER

J.K. Mathur, J.

1. This is second bail application moved on behalf of Bhanu Pratap who is alleged to have committed an offence punishable under Section 8/20 N.D.P.S. Act.

2. Brief facts of this case are that S.I. Chhedi Prasad Upadhyaya along with constables was on duty when he came to know that the accused had smack at his residence. He went there and concealed himself while constable Mohammad Firoz called the accused and told him that he was a student and asked him to give smack. The accused gave 5 gm. smack to him and demanded Rs. 400/- as its price. Constable Mohammad Firoz then introduced himself. When the accused tried to run away, he was apprehended by the Sub-Inspector and the constables.

3. The earlier bail application moved by him was rejected by this court on 17-1-91. The present bail application has been moved again. This application has been pressed firstly on the ground that the version of the incident as given by the prosecution is improbable. Secondly that the recovery was illegal; and then that samples were not kept in separate sealed cover and also that there was non-compliance of provisions of Section 42 of N.D.P.S. Act.

4. For the first assertion, the learned counsel tried to read the recovery memo to suggest that according to it the smack was given to the S. I. and not to the constable which was not consistent with the subsequent part of the statement in the recovery memo according to which the S.I. came there only when the accused tried to run away.

5. At this stage it need merely be said that the recovery memo is suggestive of the smack having been given by Bhanu Pratap to the constable and not the S.I.

6. There is no patent improbability in the version given in the recovery memo.

7. It was then urged on behalf of the petitioner that the alleged smack seized from the petitioner was not kept in a sealed cover separately for the purposes of analysis and, therefore, no evidence can now be available to the prosecution to show that the article recovered from the petitioner was a narcotic.

8. For this submission reliance was placed by the petitioner on the Standing Order issued by the Government of India, Ministry of Finance on 13-6-1989 which provides for the taking of samples for analysis.

9. According to these instructions the samples should be drawn on the spot and should not be less than 5 gm. each for analysis. In the present case the entire amount recovered was 8 gms. The learned counsel for the State also informed that the recovery article has been sent for chemical analysis. In view of this I do not find that at this stage it can be said that it was not possible for the prosecution to prove the identity of the drug recovered.

10. Reliance was also placed by the learned counsel for the petitioner on the case of Laxmi Narain v. State, 1990 LLJ 257 (Sic).

11. In that case the facts were entirely different. The alleged narcotic recovered had been produced in the court and they were sent for analysis from the court. The High Court deplored the sending of sample to the laboratory through the machinery of court and doubted the identity of samples sent because the packets did not show the signatures of any responsible officer.

12. In any case at this stage it cannot be said that the prosecution shall not be able to prove that the article recovered was a narcotic substance.

13. It was next urged that the provisions of Section 42 of the Narcotic Drugs and Psycho-tropic Substances Act, 1985 have not been complied with.

14. Section 42 of the said Act applies to the entry, search and seizure made into any building, conveyance or a place.

15. In the present case, no building, conveyance or place was entered into. The recovery was made from the person of the accused in a public place outside his house.

16. The situation in the present case appears to be covered by the provisions of Section 43.

17. The additional requirements contained in Section 42 of the Act for preparing of memo about the information are not required for the seizure made under Section 43 which also permits arrest of person from whom the narcotic is seized.

18. It was also urged that the word 'Any officer of any of the departments mentioned in Section 42' meant not only those officers who were mentioned in Section 42 but also the circumstances which are necessary to be existing for them to make an entry or search. Thus the learned counsel for the petitioner tried to import the requirement of the memo being prepared, required under Section 42, into the provisions of Section 43.

19. Such an interpretation cannot be made inasmuch as both the provisions contain one common requirement of the officer having reason to believe that an offence punishable under Chapter IV has been committed.

20. Had the requirement of preparation of memo been also necessary for the seizure and arrest made under Section 43, there was no reason for the legislature not to have specifically mentioned it along with specification aforesaid, explicitly in Section 43 itself.

21. In the case of Divakar Srivastava v. Station Officer, 1990 LLJ 240 (sic) relied upon by the learned counsel for the petitioner, the recovery was found to be illegal on the ground that it had been made from the house and was, therefore, subject to the requirements of Section 43 of N.D.P.S. Act.

22. At this stage when the matter of only bail is being considered, such submissions have to be seen only for the purposes of seeing whether there is any infirmity which goes to the root of the matter. No detailed examination of the material is permissible in the grant of bail.

23. Considering the submissions made on behalf of the petitioner, I do not find this to be a fit case for grant of bail. This application is, therefore, hereby dismissed.