

Devendra Kumar Misra Vs. State of U.P.

Devendra Kumar Misra Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/487180

Court : Allahabad

Decided On : Apr-15-1997

Reported in : 1998CriLJ2348

Judge : S.R. Singh, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 20(2), 23, 36D, 37, 50 and 52A; Code of Criminal Procedure (CrPC) , 1974 - Sections 209, 309 and 309(2)

Appeal No. : Crl. Misc. Bail Appln. No. 11 of 1997

Appellant : Devendra Kumar Misra

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : J.P. Pandey, Adv.

Disposition : Application dismissed

Judgement :

ORDER

S.R. Singh, J.

1. This application for bail has its genesis in case crime No. 139 of 1996 and 140 of 1996 under Section 8/20(2), 23 of the N.D.P.S. Act registered at P.S. Shoharatgarh Distt. Sidharthnagar. The incident is of 21-9-1996, On that date around 15.30 hours, according to the prosecution case, a police party of P.S. Shoharathgarh was conducting vehicle checking at the Khunuwa inter-section. One of the vehicles checked by the Police at the Inter-section, was the Jeep bearing registration No. MMY 3117, which was on its way to Naugarh. On a diligent search of the passengers in the Jeep, the applicant and co-accused Ram Vilas were found to have been in possession of contraband namely, Charas contained in plastic cane and plastic bag respectively each weighing 7 kilos. Both the accused persons blabbed to the Police that they had smuggled the contraband from Nepal without any authority. The police accordingly arrested and asked them if they wanted to be searched in the presence of a Magistrate/Gazetted Officer. The prosecution case further is that it is only after eliciting a word from the accused that they did not want to be searched in the presence of the Magistrate/Gazetted officer, the case was accordingly registered against both of them as stated supra.

2. Sri D.S. Misra, appearing for the applicants, to begin with, mooted the point that provisions of Section 50 of the N.D.P.S. Act were not observed in compliance, but soon retracted and relented on being pointed out that the search in the instant case was not the result of any prior information and the recovery of the contraband was a chance recovery and in the circumstances, the applicant cannot derive any benefit even if he was informed of his right under Section 50 of the N.D.P.S. Act after the search had already been effected. As a matter of fact, right to be searched in the presence of a Magistrate or a Gazetted Officer, can be taken aid of by a suspect only when the suspect is apprehended on the basis of a prior information of the contraband being smuggled.

3. The learned Counsel for the applicant then switched gear to another submission of there being no compliance with the requirements of Section 52-A of the Act. This submission of the learned Counsel too is sans any substance. Section 52-A of the Act postulates disposal of seized Narcotic Drugs and Psychotropic Substances and lays down the procedure therefor. Non-compliance, if any, of

Section 52-A of the Act, would not render the search and seizure illegal, nor will it degenerate the recovery of contraband into one being inadmissible in evidence. That apart, I am of the view that non-compliance, if any, of Section 52-A would not render effective the embargo on the Court's powers to grant bail.

4. Sri D.S. Misra, then mooted the submission that there was no valid order of remand of the applicant for his judicial custody in terms of Section 309, Cr.P.C. and his unabated detention in jail was, therefore, unauthorised. To shore up his submission, the learned Counsel placed reliance on the averments made in the Suppl. Affidavit and the order dated 14-10-1996 (Annexure SA 1) of the Sessions Judge, Sidharthnagar, thereby, authorising Jail Superintendent Basti, to keep the applicant in its custody until the conclusion of the sessions trial and to produce him on the dates set down by the Court. The learned Counsel canvassed that unlike the power of Magistrate under Section 209, Cr.P.C., the Court has no power under Section 309, Cr.P.C. to remand the accused to custody until the conclusion of the trial.' Reliance was placed on Raghvendra Singh v. State 1983 All LJ 611.

5. Sri Sudhir Mehrotra, learned A.G. A. urged that Annexure S.A. 1 relied on by the applicant is not the order of remand but warrant of custody. He produced certified copy of the orders noted On the remand file of the Magistrate as well as the remand orders passed by the Sessions Court on various dates to which the case was adjourned from time to time. It is eloquent from the order-sheet that after his arrest, the applicant Was produced before the remand Magistrate on 20-9-1996 on which date the remand Magistrate granted remand from 22-9-1996 to 5-10-1996 simultaneously directing the Supdt. District Jail, Basti to produce the applicant in the Court on 5-10-1996. The applicant, it appears, was produced before the Magistrate on 1-10-1996 instead of 5-10-1996 and the learned A.G.A. stated at the bar that the courts were due to be closed and therefore, peremptory direction was issued to jail authorities to produce the applicant on 1-10-1996. The order sheet dated 1-10-1996 implicitly indicates that the applicant was produced before the Magistrate and on a perusal of the case diary, the Magistrate further granted remand for judicial custody of the applicant from 1-10-1996 to 14-10-1996. On 14-10-1996, the applicant was produced before the Sessions Judge, Sidharthnagar, who remanded him to Jail custody for 14 days between the period

from 14-10-1996 to 26-10-1996. The court's order dated 14-10-1996, giving 14 days' remand to the applicant as it finds mention in the order sheet, is extracted below for ready reference.

^vkt vfHk;qDr nsosUnz dqekjmijksDr ftyk dkjkxkj cLrh ls ryc dj U;k;ky; ds le{k izLrqr gS A foospd }kjkfjek.M izkFkZuk i= e; lh- Mh- izLrqr dj 14 fnu fjek.M dh ;kpuk dh x;h gS Avoyksu dkxtr fd;k x;k A fjek.M ds vk/kkj i;kZlr gS

vr% 14 fnu fjek.M Lohr gqv k A

vkns'k gqv fd v/kh{k d ftykdkjkxkj cLrh mDr vfHk;qDr dks fnukad 14-10-1996 ls 26-10-1996 rdvuh vfHk;k{k esa j[ks rFkk fnukad 26-10-1996 dks U;k;ky; ds le{k izLrqr djsa A**

6. The certified copy of the order-sheet is eloquent of the fact that on 26-10-1996, the applicant was produced before the Sessions Judge and was again given 14 days' remand for the period from 26-10-1996 to 8-11-1996. The Jail Superintendent was directed to produce applicant before the Court on 8-11-1996. The order-sheet further bespeaks that charge-sheet was filed before the Sessions Judge on 1-11-1996 on which date the case was registered and the file was ordered to be put up on 8-11-1996 i.e. the date already fixed. The applicant was produced before the Sessions Court on 8-11-1996 and the case was adjourned to 9-12-1996 with the specific purpose to supply police papers to the applicant on the said date and also to enable the applicant to engage his counsel. On the next date to which the case was adjourned namely 9-12-1996, the case was transferred to the Court of 2nd Addl. Sessions Judge, Sidharthnagar and the applicant was produced before the said Court. Since copies were not ready, the case was ordered to be put up on 23-12-1996 with a direction to summon the accused from Jail for the date fixed. On the subsequent dates namely, 23-12-1996, 6-1-1997, 20-1-1997 and 3-2-1997, adjournments were allowed and the applicant was remanded to judicial custody till the next date fixed in the case. The charges were framed on 3-2-1997 and the case was adjourned to 17-3-1997. The applicant was till then remanded to judicial custody. Similarly, remand orders were passed upon the case being adjourned on 17-2-1996, 27-2-1997 and 13-3-1997 also.

7. The argument that the applicant was remanded under Section 309, Cr.P.C. to judicial custody, for indefinite period by the Sessions Court, is unavailing and does not command itself for acceptance. The order dated 14-10-1996 (Annexure S.A. 1) has the characteristic of a warrant of authorisation issued to the Jail Superintendent. The remand order as noted on the order-sheet of the case, explicitly indicates that the applicant was remanded to judicial custody from 14-10-1996 to 26-10-1996 on which date the case was adjourned by the Sessions Judge. In this fact situation, the decision in Raghvendra Singh v. State 1983 All LJ 611, relied upon by the learned Counsel is of no assistance. The applicant in the instant case has been remanded by the Sessions Court from date to date and not 'until the conclusion of the trial'.

8. The orders dated 8-11-1996 and 9-12-1996, no doubt reflect that no specific order of remand to judicial custody was passed by the Sessions Court but on subsequent dates, the orders passed, reflect unmistakably that specific orders of remand have been passed by the Sessions Court not for indefinite period, but in tandem from one date to next adjourned date. Absence of specific orders of remand on 8-11-1996 and 9-12-1996 is not susceptible of detention being branded illegal and the petitioner cannot claim entitlement to be enlarged on bail on that count. In Mashooq Ahmad v. State of U.P. 1987 All LJ 329, it has been held that the remand order can be made by issue of warrant also in that all that Section 309, Cr.P.C. postulates is that a written order should be passed only justifying the adjournment and so far as remand is concerned, only warrant will meet the requirement. The fact that the warrants were issued to the Jail authorities on various dates, cannot be disputed in view of the fact that the applicant was in fact produced in the Court on the dates on which the case was fixed from date to date. There is thus no infirmity in the remand order and the judicial custody of the applicant pending trial is not in any manner; vitiated. In the circumstances, I do not see any; breach of Section 309, Cr.P.C. and the applicant is not entitled to be released on bail in that he has failed to discharge the burden placed on him by Section 37 of the Act that he is not guilty of the offence.

9. Before parting, I would not quibble to observe that I find no principle to subscribe to the submission that the Sessions Judge while taking cognizance of

that offence under Section 36D of the N.D.P.S. cannot remand the accused to custody until the conclusion of the trial under Section 309, Cr.P.C. The power to adjourn the case from date to date is regulated by the section and therefore, there would be no peril of the trial being lingered for indefinite period to the prejudice of the accused. Limitation to remand the accused until the conclusion of the trial has been placed by the 1st proviso to Section 309(2), Cr.P.C. on the power of the Magistrate and not on the powers of the Sessions Court. It may be recalled that Magistrate while committing a case to the Court of Sessions under Section 209, Cr.P.C. can remand the accused until the conclusion of the trial. In principal I find no oddity if the Sessions Judge after taking cognizance under Section 36D of the N.D.P.S. Act remands the accused under Section 309, Cr.P.C. until the conclusion of the trial. In my opinion, Raghvendra Singh (1983 All LJ 611) (supra) has not been correctly decided in its perspective and I would have referred the question to a larger Bench but for the reason that the said decision does not apply to the facts of the present case.

10. In the result, the application fails and is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com