

Abdul Aziz Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-22-2002

Reported in : 2002CriLJ2913

Judge : B.K. Rathi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 4, 5, 436, 439 and 482; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 4, 5, 8, 16, 19, 21, 24, 27A, and 37

Appeal No. : Crl. Misc. Appln. No. 1966 of 2002

Appellant : Abdul Aziz

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ashwini Kumar Awasthi and ;Manish Tiwary, Advs.

Judgement :

ORDER

B.K. Rathi, J.

1. This is a petition under Section 482 Cr.P.C. with the request to release the petitioner on bail in case crime No.257 of 2001, under Section 8/21 of N.D.P.S.Act,

police station Maduadeeh, district Varanasi with alternative prayer to pass appropriate order.

2. The facts of this case are that a case under Section 8/21 N.D.P.S. Act has been registered against the petitioner at case crime No. 257 of 2001, police station Maduadeeh, district Varanasi. According to prosecution the petitioner was found in possession of 2.5 gm. of hereoine. The petitioner moved an application for bail before the Magistrate which was rejected. Thereafter, the petitioner moved Bail Application No.381 of 2002 before the Sessions Judge, Varanasi which have been rejected on 20-02-2002. It appears from that order of the learned Session Judge, Varanasi that it was argued by the petitioner that the offence isailable and therefore, he is entitled to bail under Section 436 Cr.P.C. The entire argument of the learned counsel for the petitioner was incorporated in the order by the learned Sessions Judge, Varanasi. However, he has not recorded any finding on the same. He has accepted the argument of the D.G.C. (Criminal); that this matter is under consideration before this Court on the point as whether the present offence isailable or not. Therefore the learned Sessions Judge in view of the pendency of the matter before this Court has not recorded any finding on the point and rejected the application for bail.

3. Normally the petition for grant of bail are not accepted under Section 482 Cr.P.C. as the remedy has been provided under Section 439 Cr.P.C. However, in the present petition the only request made during the arguments is that it may be decided that the offence isailable and the learned Sessions Judge may be directed to dispose of the bail application in accordance with law. During the argument the request for grant of bail has not been pressed.

4. I have heard Sri Manish Tiwary, learned counsel for the petitioner and the learned A.G.A.

5. In the table given at the end of the N.D.P.S. Act, 1985 as amended by Act No. 9 of 2001 (hereinafter referred to as 'Act') herein is mentioned as item No.55, and quantity of same upto 5 gms. has been shown as small quantity and 250 gms. and above has been shown to be as commercial quantity. Narcotic Drugs and Psychotropic Substances have been defined in Clause (XIV) and (XXIII)

respectively of Section 2 of the Act. The possession of heroin is prohibited under Section 8 of the Act and for the contravention of same has been made punishable under Section 21 of the Act. Under Clause (a) of Section 21 if the contravention involves small quantity, the punishment provided is rigorous imprisonment for a term which may extend to six months or with fine which may extend to Rs. 10,000/- or with both. The result of the analysis is that the punishment for the offence alleged to have been committed by the petitioner provided under the Act is rigorous imprisonment for a term which may extend to six month or fine or with both.

6. Now the question is whether the present offence is bailable. Section 37 of the Act overrides the provisions of the Cr.P.C. and provides that the offences punishable under the Act are cognizable and not bailable. It is proper to extract the Section 37 of the Act which is as follows:

Section 37, Offences to be cognizable and non-bailable - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for (offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) the limitations on granting of bail specified in Clause (b) of Sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

7. The bare perusal of the above Section (34) show that the provisions of the Act will prevail over the provisions of the Cr.P.C. only to the extent that the offences under the Act shall be cognizable and regarding consideration of bail for offence under Sections 19, 24 and 27A only. The provisions of Section 37 override the provisions of the Cr.P.C. to this extent only. In other matters, the provisions of Cr.P.C. will apply to the offences under the N.D.P.S. Act also. In this connection, I may refer to Section 5 of the Cr.P.C, which is as follows:

Saving - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

8. According to this Section, therefore, the special provisions to the contrary will override the provisions of the Cr.P.C. Clause (2) of Section 4, Cr.P.C. further provides that 'all offences under any law shall be investigated, enquired into, tried and otherwise dealt with accordance to the provisions, but. subject to the enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwtse dealing with such offences.'

9. From the analysis of provisions of Section 37 of the N.D.P.S. Act and Sections 4 and 5 of the Cr.P.C. it is clear that except for offences under Sections 19, 24 and 27A of the Act, the provisions for bail as given in the Cr.P.C. will apply. The offences no doubt are also cognizable and to this extent also the provisions of the Act will prevail over the provisions of the Cr.P.C. Therefore, in the matter of bail the provisions of Cr.P.C. will apply in the present case.

10. Bailable offences have been defined under Clause (a) of Section 2 , Cr.P.C. which means offence which is shown as bailable in the first Schedule, or which is made bailable by any other law for the bail being in force and 'non-bailable offence' means any other offence. The first Schedule of Cr.P.C. consists of two parts, the first part is regarding the offences under the I.P.C. and second part is regarding offences against other law. The second part provides that if the offence is punishable with imprisonment for less than three years or fine only it shall be bailable and can be tried by any Magistrate.

11. In view of the above the provisions, the offence alleged to have been committed by the Magistrate is a bailable offence.

12. Accordingly, it is decided that the offence committed by the petitioner is bailable offence. The learned Sessions Judge is directed to dispose of the bail application of the petitioner considering the offence committed by the petitioner as bailable in the light of the provisions of Section 436, Cr.P.C.

The petition is disposed of finally.

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