

Central Bureau of Narcotics Vs. Devisingh

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Court : Madhya Pradesh

Decided On : Apr-29-2004

Reported in : 2004(3)MPHT398; 2004(4)MPLJ256

Judge : S.L. Kochar, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 37 and 67

Appeal No. : Criminal Revision Nos. 926 and 928/2003

Appellant : Central Bureau of Narcotics

Respondent : Devisingh

Advocate for Def. : H.S. Oberoi, Sr. Adv. assisted by ;P. Prasad, Adv.

Advocate for Pet/Ap. : Manoj Soni, Adv.

Judgement :

ORDER

S.L. Kochar, J.

1. Both the aforesaid Criminal Revisions are being disposed of by this common order.

2. The Department has filed two criminal revisions, one against grant of anticipatory bail to the respondent-Devisingh vide order dated 9-9-2003 by the learned Special Judge (under NDPS Act), Ratlam and another against grant of regular bail on 23-9-2003 by the same Court.

3. The submission of the learned Counsel for the applicant is that the learned Special Judge has not considered the special provisions of bail as enshrined in Section 37 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for brevity 'the Act'). According to the learned Counsel while granting anticipatory bail, the learned Court below having held that the respondent was the licensee and it appears that he had cultivated on the excess area of the land than the area allowed to him to cultivate in the licence, erred in granting bail. By this observation, the learned Trial Court found the prima facie case against the respondent. Learned Counsel further submitted that the learned Trial Court has not given any finding that he is not likely to commit any offence while on bail. After granting anticipatory bail, the respondent applied for regular bail and the same was granted by the order dated 23-9-2003. The learned Counsel, in support of his contention relied upon the recent judgments delivered by the Apex Court in the case of *Customs New Delhi v. Ahmadaliev Nodira* [JT 2004(3) SC 264] and *Murleedharan v. State of Kerala* [2001 SCC (Cri) 795].

4. As against this, the learned Counsel for the respondent has submitted that the respondent (accused) has not committed any offence. The Department has registered a case against him only because of some technical defect and he could not submit the information about change of land in time to the Department because of illiteracy and that, the applicant was always available to the Department during the course of enquiry as well as investigation and his statements were recorded twice under Section 67 of the Act and in both the statements, he has explained the situation. Learned Counsel has further submitted that the applicant was granted licence to cultivate the opium on survey No. 43/2 area 20 ARA. This survey number was owned by one Smt. Kanchanbai of the same village and he had a talk with her for leasing it out to him for cultivation of opium and on that basis he had mentioned the number of this survey in his application. But, after grant of licence, she refused to lease out this land in favour

of the respondent and, therefore, he cultivated opium on his own land bearing survey No. 40/2/3 admeasuring 10.50 ARA. His statement was recorded in question and answer form, but no question was asked by the Department as to why he did not furnish information in this regard. The appellant has answered the other questions about measurement and other things. If the question regarding sending information to the Department about change of survey number would have been asked, he would have answered that question. The learned Counsel also submitted that he has not exceeded the area for the purpose of cultivation. So far as his presence at the time of measurement of plot is concerned, he has given the answer in his statement before the Department that he was not present in the village and had gone to his father-in-law's village and his father Mannsingh was present at that time. Learned Counsel, in the light of these facts has submitted that it is not a case in which the respondent has committed intentional illegality by cultivating the opium on his own land.

5. Having heard learned Counsel for the parties and after perusing the record as well as the abovementioned Supreme Court decisions, this Court is of the view that while considering the bail application of the accused who is facing prosecution for the offences under the Act, it is incumbent upon the Court concerned to consider the provisions of Section 37 of the Act which is the special provision for bail for the offences falling under the Act. In the case of Customs New Delhi (supra), the bail was granted to the accused who was found in illegal possession of huge quantity of 'Diagepam' .5 mg. tablets. The statement under Section 67 of the Act was recorded and there was a positive report from Central Revenue Control Laboratory; But, the Courts below ignoring all these important facts granted bail to the accused. In this back-drop of the case the Apex Court cancelled the bail holding that there Was prima facie case made out against the accused and the Courts below have not given finding that there is no possibility of repetition of the offence in future by the applicant. In another case of Murleedharan v. State of Kerala (supra) anticipatory bail was granted to the accused and he was not available for custodial interrogation by the police. Therefore, the Supreme Court has ordered for cancellation of anticipatory bail. In the case in hand, no contraband article, as covered under the Act, is said to have been seized from the possession of the accused. The applicant was duly granted licence by the

authority as per provisions of the licence. The only allegation against him is that instead of cultivating opium crop on Survey No. 43/2, which stands in the land recorded in the name of Smt. Kanchanbai, he cultivated the crop on his own land bearing survey No. 40/2/3 and at the time of measurement he was not present, but his old father aged about 68 years was present.

6. In the light of these facts, provisions under Section 37 of the Act for grant of bail to the applicant has to be considered. In the above-mentioned Supreme Court judgments the accused persons were not having any valid licence for cultivation or possession the contraband article. In one case he was possessing huge quantity of 'Diagepam .5 mg. tablets' and in another case accused was not available for interrogation. Such is not the situation in the present case. In the case in hand, the respondent was always available to the Department during the course of enquiry and thereafter during investigation. The Department has recorded his statement under Section 67 of the Act and did not arrest him. That shows that even upto that time, the Department was not clear in its mind whether any case is made out against the respondent/accused or not. When the Department registered the case and wanted to arrest him, at that juncture, the respondent/accused applied for grant of anticipatory bail and the learned Trial Court granted the anticipatory bail. Thereafter, the respondent submitted an application for regular bail and the same was also allowed.

7. Now after grant of regular bail, there is no existence of any anticipatory bail order and the same merges into the order of regular bail. Therefore, the question of consideration of its legality or illegality would not arise. Now this Court has to see whether the regular bail has been granted by the Trial Court in accordance with the provisions of Section 37 of the Act or not.

8. For this purpose, in the peculiar facts and circumstances of the present case, both the aforesaid Supreme Court Pronouncements are not applicable because from the possession of the respondent, no contraband articles were said to have been seized and he was also not absconding. His statements were recorded under Section 67 of the Act and in that statement, he has given the explanation for change of land for cultivation of the crop. Of course it was incumbent on him to

give information to the Department to this effect and obtain permission for changing survey number as well as got the same changed in the licence.

9. In the light of these facts, it can be said that there is no possibility of repetition of the offence by the respondent (accused) in future and there are reasonable grounds for believing that he is not guilty of such offence. The learned Trial Court, while granting bail to the applicant, has not strictly observed these ingredients in the order but on over all factual scenario of the present case, this Court is of the opinion that since the respondent/accused was granted a licence for cultivation of crop of opium and he was available during the course of enquiry and investigation and also gave his statement under Section 67 of the Act, merely because he cultivated the crop on some other land and that too of his own, he may not be debarred from getting benefit of bail and if bail is granted, now after lapse of long period and during this period there is no allegation for commission of breach of condition of order, no case exists for cancellation of his bail.

10. Thus, in the facts and circumstances of the present case, now this Court does not find any ground for cancelling the bail granted to the respondent (accused). Consequently, both these revisions are hereby dismissed.

11. Let a copy of this order be placed in the record of Cr. Rev. No. 928/2003 and the original be retained in the record of Cr. Rev. No. 926/2003.

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