

Binod Kumar Gupta Vs. State of Orissa

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Court : Orissa

Decided On : Nov-23-2001

Reported in : 93(2002)CLT108

Judge : M. Papanna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; Narcotic Drugs and Psychotropic Substances Act - Sections 20, 26, 27, 37, 37(1) and 37(2)

Appeal No. : Criminal Misc. Case No. 6570 of 2001

Appellant : Binod Kumar Gupta

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : H.S. Mishra, Adv.

Disposition : Case dismissed

Judgement :

M. Papanna, J.

1. This is an application under Section 439 Cr.P.C. filed by the petitioner seeking pretrial bail in Plant Site Rourkela P. S. Case No. 30/2001 corresponding to G. R. Case No.121/2001 now subjudice before the learned Addl. Sessions Judge,

Rourkela.

2. On receipt of reliable information that the petitioner was in possession of ganja at Old Bus Stop, Rourkela, the police, Plant Site P. S. searched his person and recovered and seized 5 Kgs. of ganja contained in an attache. In support of such possession when he failed to produce any licence or authority S. I. of Police, Shri B.C. Mishra, set the criminal law into motion by lodging an FIR before the I.I.C., Plant Site P.S., Rourkela, who in turn registered Plant Site Rourkela P. S. Case No. 30/2001 under Section 20(b)(i) of the N.D.P.S. Act (in short 'the Act').

3. The prayer for bail moved before the learned Additional Sessions Judge, Rourkela, having been rejected the present petition seeking for pre-trial bail has been filed in this Court. The learned Counsel for the petitioner has contended that the entire process of search and seizure resorted to by the Prosecuting Agency as per mandatory provision laid down under the Act is completely illegal, mechanical and is an empty formality. That apart, the petitioner having been incarcerated for about a year, he should not be further detained in the jail custody before being found guilty and convicted of the above charges to which the learned Additional Standing Counsel appearing for the State vehemently objected in view of Section 37 of the Act which bars grant of bail to the accused.

4. On perusal of the materials placed before me, I am convinced regarding recovery and seizure of the contraband articles from the possession of the petitioner by the police observing all legal formalities of search and seizure provided under the Act. Thus the only question for consideration is whether Section 37 of the Act applies to the petitioner particularly when out of five years of rigorous imprisonment with which he shall be visited if found guilty during trial, he has already undergone imprisonment about one year as an UTP.

5. Before going to discuss the case law on the subject Section 37 of the Act may be quoted as follows :

'Offences to be cognizable and non-bailable :

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 :

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

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act 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 or any other law for the time being in force, or granting of bail.'

6. What I have understood on perusal of provision of Section 37 of the Act is that a person, who is accused of an offence punishable with imprisonment which may extend to five years or more, shall not be released generally on bail. Further it is seen from the above provision of law that if the Court decides to grant bail to the petitioner, it must first be satisfied basing on the record produced before it that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged. Not only that but also the court must come to a conclusion that the petitioner is not likely to commit any offence while on bail, it has also been specified in Sub-section (2) of Section 37 of the Act that the conditions for granting bail specified in clause (b) of Sub-section (1) of Section 37 of the Act are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail.

7. The Apex Court in the case of State of Madhya Pradesh V. Kajad reported in 2001(6) Supreme 844, strictly restricted grant of bail to the accused charged with offences under the Act stating that liberal approach for granting bail for offences under the Act is uncalled for in view of Section 37 of the Act. This shows the purpose for which the Act is enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. Their Lordships have ruled in the

reported case that negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1) of the Act.

8. The pertinent question raised at the bar is whether the petitioner, having been incarcerated in the prison for about a year before being found guilty and convicted, can be granted bail. To answer this question, it is profitable to place reliance of *Maktool Singh V. State of Punjab*, reported in 1999(3) SCC 321 : 1999(4) Supreme, 26, wherein it has been observed that the only offences exempted from the purview of the aforesaid rigours on the bail provisions are those under Sections 26 and 27 of the Act, former being punishable upto a maximum imprisonment for three years and the later upto a maximum imprisonment for one year. For all other offences, the court's power to release an accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

9. In the light of the above propositions of law as has been ruled by the Apex Court I am rather very slow in accepting the aforesaid contentions raised at the bar in releasing the petitioner on bail even if he has incarcerated for about a year before being found guilty of the offence with which he has been charged by ignoring the mandatory requirements of Section 37 of the Act and the condition governing the grant of bail under the Code of Criminal Procedure. The learned trial Judge is not to be influenced by any of the observations made in this order regarding factual aspect of the case and instead he shall adjudicate matter on legal evidence.

10. In the ultimate result, the application for bail moved by the petitioner merits no consideration and is rejected out-right.

The Criminal Misc. Case is dismissed.

11. Crl. Misc. Case dismissed.