

Daud Lima Vs. State of Orissa

Daud Lima Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/532868

Court : Orissa

Decided On : Nov-21-2003

Reported in : 96(2003)CLT745

Judge : P.K. Mohanty and ;B.P. Das, JJ.

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

Appeal No. : BLAPL No. 680 of 2003

Appellant : Daud Lima

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : B.S. Mishra-1, K.N. Patnaik, M. Mishra, P.K. Mohanty, R.N. Panda, P.R. Mishra, S. Das, S.K. Nanda and U.K. Panigrahi

Judgement :

P.K. Mohanty, J.

1. This matter has come to this Division Bench on a reference made by one of us P.K. Mohanty, J. sitting single.

2. The question for consideration is whether irrespective of rejection of petitioner's earlier bail application, the second application for bail should be considered in parity with the subsequent orders passed by two learned single Benches of this Court releasing the co-accused persons on bail.

3. Facts in brief is that the petitioner along with two others was found to have carried 4 to 5 Kgs. of Ganja each in their respective bags and that was seized and a case under Section 20(b) of the N.D.P.S. Act was registered. The present petitioner and the co-accused Susanta Kumar Moharana filed separate petitions before the learned Special Judge for release on bail. The learned Additional Sessions Judge-cum-Special Judge, Parlakhemundi in G.R. Case No. 221 of 2002 rejected the bail application as against which Criminal Misc. Case No. 6263 of 2002 was filed before this Court. The learned single Judge by order dated 12.9.2002 on consideration having found materials that the petitioner was detected to have carried Ganja in the bag which was seized in presence of Gazetted Officer along with other staff and taking into consideration the fact that the other two accused persons had been also similarly carrying Ganja in their bags, rejected the bail application however with the direction to expedite the trial. Susanta Kumar Moharana, the co-accused, filed BLAPL No. 266 of 2002 and by order dated 6.12.2002 another learned single Judge, taking into consideration the quantity of Ganja seized and the length of custody, directed release of petitioner Susanta Kumar Moharana on bail by the First Additional Sessions Judge-cum-the Special Judge, Gajapati-Parlakhemundi on such terms and conditions as the learned Special Judge deemed just and proper. The learned Judge, in the order observed that while imposing conditions, the learned Special Judge shall take care to see that such conditions are imposed that the petitioner does not try to escape trial. One Biren Mohan Behera, the third co-accused filed BLAPL No. 681 of 2003 which was listed before another (the third) single Bench and by order dated 24.2.2003 considering the fact that the petitioner therein was in possession of Ganja less than the commercial quantity, the learned Single Judge directed his release subject to certain terms and conditions. In the bail application a reference was made to the order dated 12.9.2003 passed in Criminal Misc. Case No. 6263 of 2002. But, however, in BLAPL No. 266 of 2002 filed by Susanta Kumar Moharana no such reference was made.

4. In the present bail application Sri B.S. Mishra, learned counsel for the petitioner, apart from alleging violation of mandatory provision of the N.D.P.S. Act by the investigating agency, made a submission that since the two co-accused persons including the main accused Susanta Kumar Moharana having already been released on bail by another two different Benches of this Court, the petitioner being in the similar footing, on parity he should be enlarged on bail. The contention further is that since the quantity is less than the commercial quantity, the rigour of Section 37 of the N.D.P.S. Act is not applicable.

5. Law is well settled that while granting bail even under Section 439 of the Code of Criminal Procedure the Court is to consider the materials as against the accused, chances of securing his presence during the trial, the possibility of tampering with the evidence of the witnesses and the public interest at large, even if the rigour of Section 37(1) of the N.D.P.S. Act is not available to be applied in case of seizure of a quantity below the commercial quantity in view of the recent amendment to the Act.

6. The claim of parity is misconceived since parity is available to be claimed by a person in case any person similarly situated has been dealt with in a particular manner. Since on the date the petitioner's bail application was considered in September, 2002 no other accused persons had been released by this Court and the subsequent orders of release are of no avail to the petitioner since in a bail application each accused is to be considered on the basis of the materials available as against him.

7. In 'The Law Lexicon, reprint, 2002, By P. Ramanatha Aiyer' parity' has been defined as 'being on a par with; analogy, close similarity (as) by parity of reasoning'. In Chambers Dictionary, New Edition, the meaning of word 'parity' is 'equality in status, parallelism, equivalence'. It is a sad state of affairs that when the second and third bail applications were placed for consideration, the Public Prosecutor conducting such cases on behalf of the State, did not bring to the notice of the learned Benches as to the order dated 12.9.2002 rejecting the co-accused's bail application. The cases seem to have been considered without reference to such order. Parity, if any, was required to be followed in the later orders passed by the

learned Benches, but the order having not been brought to the notice of the Court by the Public Prosecutor, the same seems to have not been considered. In such circumstances, question of dealing with the case of the petitioner keeping the parity in view does not arise.

8. However, there is another aspect of this case. Whatever be the circumstances and reasons be the other two co-accused persons more or less similarly situated are on bail and in this fortuitous circumstances the petitioner remains the sole accused out of the three accused persons to face the trial. In such situation, we are of the considered opinion that this situation has arisen in this case mainly because of the fact that the learned Additional Public Prosecutors conducting the cases on behalf of the State of those Courts while placing the case diary, did not bring it to the notice that bail application of one of the co-accused persons namely Daud Lima, the present petitioner has been rejected. It need be stated that there is no precedence in bail orders since bail orders are passed on the basis of materials as against the accused petitioners therein and no ratio of law is decided, but all the same rejection or grant of bail in the same G.R. Case as against the co-accused persons is of much relevance.

9. In that view of the matter, while repelling the contention of the learned counsel for the petitioner that the petitioner should be granted bail at par with the co-accused persons released subsequently, in the peculiar and fortuitous facts and circumstances of the case, we feel that the petitioner should be released. Accordingly, we direct the learned Additional Sessions Judge-cum-Special Judge; Parlakhemundi to release the petitioner on bail in G.R. Case No. 221 of 2002 on such terms and conditions as the learned Special Judge may consider appropriate and the trial should be expedited, if not completed in the meantime, in view of the order passed in Criminal Misc. Case No. 6263 of 2002.

B. P. Das, J.

10. I agree.