

Manak Chand Jain Vs. State

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Court : Delhi

Decided On : Sep-05-1994

Reported in : 1994IIIAD(Delhi)1552; 1995CriLJ3146; 1994(3)Crimes442; 58(1995)DLT421

Judge : Arun Kumar, J.

Acts : Narcotic Drugs Psycho. Act - Sections 21, 50 and 61

Appeal No. : Cri M.(M) 2246 of 1994

Appellant : Manak Chand Jain

Respondent : State

Advocate for Def. : G.S. Sharma, Adv.

Advocate for Pet/Ap. : K.K. Sud, Sr. Adv. and; Ms. Kamna Vohra, Adv

Judgement :

Arun Kumar, J.

1. This is a petition for grant of bail on behalf of the petitioner who is facing trial for offences under Sections 21, 61, 85 of the N.D.P.S. Act since the year 1987. Learned counsel for the petitioner has sought bail on the following grounds :-

1. Inordinate delay in trial.

2. Sickness of the petitioner

3. Non-application of Section 50, NDPS Act.

2. So far as the first point is concerned, the trial has been going on since 1987 and in spite of directions from this Court on four occasions in separate cases the trial has not concluded. According to the petitioner the delay in trial is being caused mainly by the prosecution due to non-production of its witnesses. However, counsel for the respondent does not accept this. All the same it is obvious that there has been inordinate delay in trial in this case. Admittedly the prosecution has yet to conclude its evidence. In the nature of the case it is mostly the police people who are to be examined, still they are taking it very casually.

3. The petitioner is stated to be a heart patient and has been granted bail from time to time for medical reasons. At present also it appears that he is on bail and various documents have been annexed with the present application to justify continuation of the bail of the petitioner on medical grounds.

4. Now coming to the point of non-compliance of Section 50, of the N.D.P.S. Act the learned counsel for the petitioner has drawn my attention to the Rukka on running page 21 of the petition. The Rukka does not mention anything about the notice or option being given to the petitioner in terms of Section 50 of the NDPS Act. As per the Rukka the recovery of 5 Kg. Smack was effected on 22-3-1987. Copy of the notice under Section 50, of NDPS Act is placed on running page 19 of the petition which shows that the notice was allegedly given on 23rd March 1987. This fact alone prima facie shows non-compliance of Section 50 of N.D.P.S. Act because the search and seizure which took place on 22-3-1987 the notice cannot be given after the event. The notice is allegedly signed by the petitioner and the petitioner has put the date 23rd March 1987 under his signatures. Likewise, the Inspector who has signed the notice, has put the date 23rd March 1987 (though there is some overwriting on the date). Another point which arises for consideration in the notice is whether it complies with the provisions of Section 50. NDPS Act According to the learned counsel for the petitioner the notice contains only a partial offer that is if the petitioner wanted his search to be conducted by a Gazetted Officer, Shri Raghbir Singh, ACP who was present at site, it could be

arranged. This according to the petitioner is no compliance of the statutory provision which has been held by the Supreme Court to be mandatory. In reply to this the learned counsel for the respondent submits that according to Section 50 NDPS Act it is not mandatory that the offer should be made for a search in the presence of a Gazetted Officer or a Magistrate. It is enough to make the offer for search before either of the two officers. The argument is that the word used is or and so long as the offer is made for search in the presence of either of these officers, that is enough. The word or is not to be read as and so as to mean that the offer is to be made for search before either of both the officers. While making the offer mentioning both the officers is not required under the law, according to the learned counsel.

5. I have carefully considered this argument in the light of Section 50, as well as the judgment of the Supreme Court in State of Punjab v. Balbir Singh, : 1994 CriLJ3702 which contains the conclusion in this behalf is reproduced as under :-

'When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under S. 50 in the context is all the more important and valuable. thereforee, it is to be taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a gazetted officer or a magistrate. Thus the provisions of S. 50 are mandatory.'

6. Section 50 NDPS Act has been held to be mandatory by the Supreme court. The above para further makes it clear that as per the said provision offer is to be made that he will be searched in the presence of a gazetted officer or a Magistrate. That is offer should contain mention of both the officers.

7. It is not disputed that words in sub-para 1 of Section 50, 'if such persons so require' have been interpreted by the Supreme Court as to mean that the police officer has to make an offer to the person to be searched. In view of the stringent provisions of the N.D.P.S. Act the officer is intended to make the person concerned aware of his rights under Statute. When the requirement under the Statute as interpreted by the Supreme Court is to make the person concerned aware of his rights, it follows that he has to be informed of all his rights and all the

options open to him under the law. The interpretation which the learned counsel for the respondent wants to put on this provision does not appear to be correct. The importance of making a person concerned aware of his rights has been highlighted in the said judgment of the Supreme Court and if the right is so important it is also natural that a person should know all the options available under the law so that he can exercise any of options which may appear to be best to him in the circumstances. A particular person may like to be searched in the presence of a gazetted officer while the other may like to be searched in the presence of a Magistrate or vice versa. thereforee, I am of the view that the offer to search in terms of Section 50, N.D.P.S. Act must contain both the options i.e. to be searched in the presence of a gazetted officer or a Magistrate. If the main purpose behind the requirement of making the offer to the person to be searched, as interpreted by the Supreme Court in the aforesaid decision is to make the person aware of his rights under the law, there is no scope for the argument advanced on behalf of the State. thereforee the complete offer as required under Section 50 N.D.P.S. Act has not been given to the petitioner in the present case.

8. Keeping in view all these factors it is ordered that the petitioner be admitted to bail subject to his furnishing a personal bond in the sum of Rupees. 50,000/- with one surety in the like amount to the satisfaction of the trial Court.

9. The petition is disposed of.

10. Petition allowed.

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