

Parneet Ghildayal Vs. State

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Court : Delhi

Decided On : Sep-26-1991

Reported in : 46(1992)DLT222

Judge : V.B. Bansal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1119 of 1991

Appellant : Parneet Ghildayal

Respondent : State

Advocate for Pet/Ap. : Ranjan Dwivedi and; S.K. Agarwal, Advs

Judgement :

V.B. Bansal, J.

(1) This order is to dispose of an application under Section 439, Code of Criminal Procedure, by Parneet Ghildayal, for being released on bail, in case Fir No. 457/90, Police Station Ambedkar Nagar, under Section 20 of the Narcotic Drugs and Psychotropic Substance (hereinafter referred to as the Ndps Act).

(2) According to the prosecution story, on receipt of a secret information a raiding party was organized by S.I., K.L. Yadav in which besides police officials one

Ashok Kumar from public was 'also joined. The petitioner was apprehended having a thela' in his right hand The petitioner was given an option of being searched In the presence of a Metropolitan Magistrate or a gazetted officer, which was declined. On search he was found to be in possession of 1 kilogram of charas. 50 gms. charas was separated as a sample and thereafter both the sample and the remaining charas were sealed separately with the seal of K.I. & S.K.T. The sample well analysed in CfsI gave positive test for charas. It is in these circumstances that the petitioner has been arrested and is at present in custody.

(3) Learned Counsel for the petitioner has submitted that the facts have now come to light after getting copies of the challan indicating that the sample sent to the CfsI have been tempered with and on this account it cannot be said that the recovery effected from the petitioner was that of charas and on this account the petitioner is entitled to be released on bail. He has further submitted that accordingly to the prosecution story 50 gms. was sealed separately as a sample, but when examined in the CfsI it has been found to 60 gms. from which the only conclusion could be that it has been tempered with.

(4) On the other hand, the learned Counsel for the respondent submitted that there might have been a mistake in the weighing as the Investigating Officer was using the ordinary weights while the weights used in the CfsI were sophisticated. He has also submitted that statements recorded by the Investigating Officer indicate that the sample was not tempered with by anyone till it was examined in the CfsI and, thus, prayed that the application may be dismissed. He has also referred to the affidavits of Investigating Officer S.I, K.L. Yadav sworn on 6.6.91 and 26.6.91 and 16th August, 1991,

(5) I have given my thoughtful consideration to these submissions and have also perused the original record including the CfsI report and the letter dated 25.7.91 received from Sr. Scientific Assistant, CfsI, Cbi, received by the SHO. A perusal of the affidavit dated 6. b. 91 of the Investigating Officer shows that there might have been a bonafide mistake either during investigation or during CfsI weighing and that in the CfsI the sample may have been weighed with the cloth in which it was wrapped. The matter, however, was clarified by the Sr. Scientific Assistant that only

the contents of the sealed parcel were Found to be 60 gms. which did not include the weight of the cloth. There is no doubt that the investigating Officer has claimed having recorded the statement of Muharar Malkhana to the effect that the sample was not tempered with by anyone, the fact, however, remains that there is a difference in the weight of the sample to the extent of 10 gms. Learned Counsel for the respondent has placed reliance upon the case of Surajmal Kanaiyalal Soni, Appellant v. The State of Gujarat, respondent. : (1990)2GLR923 to the effect that such a discrepancy cannot be of any help to the accused when there are statements to the effect that the sample was not tempered with by anyone. A perusal of the said judgment indicates that according to the prosecution story the sample taken was of 50 gms. of opium which was found to be 48 gms. by the Chemical analyser. It was in these circumstances that the Court came to the conclusion that this difference was insignificant Keeping in view the statements of the witnesses and the difference In the quantity. In the instant case, there is a difference of 10 gms which at this stage cannot be said to be insignificant.

(6) Considering all these facts I am clearly of the view that a case has been made out for the release of the petitioner on bail. However, I have arrived at a tentative conclusion and the case is to be decided by the Trial Court on merit, after recording the evidence produced during trial.

(7) Consequently I order for the release of the petitioner subject to bids furnishing personal bond in the sum of Rs. 25,000.00 with one surety in the like amount to the satisfaction of the concerned Court. Bail granted.

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