

Satish Kumar Vs. Narcotics Control Bureau

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Court : Delhi

Decided On : Jun-07-1989

Reported in : 1989(17)DRJ257; ILR1989Delhi84

Judge : P.N. Nag, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 888 of 1989

Appellant : Satish Kumar

Respondent : Narcotics Control Bureau

Advocate for Pet/Ap. : I.U. Khan and; I.S. Arora, Advs

Judgement :

Nag, J.

(1) The petitioner in this bail petition has applied for grant of extension of interim bail for a period of three months under Section 439 of the Code of Criminal Procedure. The petitioner has been accused of an offence under Section 21 of [Narcotic Drugs and Psychotropic Substances Act, 1985](#). He was arrested on 1-5-1987. He has been making applications for grant of bail/interim bail and this is the fourth application which is under consideration. The petitioner, as usual, has alleged that he is innocent and there is no evidence against him.

connect him with the commission of the offence and he has been falsely implicated. Hon'ble Ms. Justice Santosh Duggal on 3rd March, 1989 in the petition registered as Cr.M. (M) No. 125 of 1989 granted interim bail for a period of four weeks from the date of his release on compliance of certain conditions, in connection with the illness of his wife who was to be operated upon for severe appendicitis. The operation of the wife of the petitioner for appendic IT is was performed by the doctors on 10.5.1989 and for post operational care, the, Court vide order dated 5th May, 1989 in Cr. M(M) 487 of 1989 extended the bail for a period of four weeks and directed the petitioner to surrender before the authorities concerned on or before 13.6.1989. The petitioner again has come up with this present petition with the same prayer that the wife of the petitioner has not fully recovered from the 1st major operation of the appendic IT is and yet has developed another complication i.e. Tomass infection and required another major surgery. He has also annexed certain medical certificates of private doctors as a testimony in support of the disease of the wife of the petitioner. Since according to the petitioner he is looking after his wife at home, taking her to hospital continuously and thereforee further extension of interim bail is required for a period of three months to enable him to have his wife operated open for other complications as the interim bail already ranted is only up to 13.6.1989.

(2) On 31.5.1989 notice of the application waa given by the Court to the State for 7th June, 1989 and on 7th June, 1989 State's counsel opposed this application at the time of hearing. Admittedly the offence of which the petitioner has been accused of is punishable for imprisonment for more than five years.

(3) The jurisdiction and powers of the Court to grant bail have been conferred under Section 37 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 Section 12. This aforementioned Amend- ment Act of 1988 has been enforced in whole of India by the Government of India vide notification dated 29th May, 1989. The Section 37 may be repro- duced below:-

'Offence to be cognizable and fnot-bailabic

(1)Notwithstanding any- thing contained in the Code of Criminal Procedure, 1973 (2 of 1974).

(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 limitation on granting of bail specified in clause (b) of SubSection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.'

It is no doubt true (that under Section 36A(3) of the Act, special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure were not affected, and these could be exercised by the High Court in case of non-bailable offences except in cases punishable with transportation/imprisonment of life or death, etc.

(4) Under Section 37 of the Act, further limitations have been imposed for grant of bail in respect of the offences under this Act as Section 37(1) overrides the provisions of the Code of Criminal Procedure, 1973. The bare perusal of the provisions under Section 37 of the amended Act which has been enforced from 29th May, 1988, would show that in cases of offences under this Act which are punishable for a term of 5 years or more and where the Public Prosecutor, after having been provided an opportunity, opposes the application for release of the accused on bail, there is a restraint put on the power of the Court that in such facts and circumstances, the accused shall not be released on bail. In fact, as a rule bail shall not be granted in such cases. However, the Court in its discretion has been empowered to release the accused on bail in the following situation :- (i) that there are reasonable grounds for believing that he is not guilty of such offence ; and (ii) that he is not likely to commit any offence while on bail. It therefore, inevitably

follows that the court has no power to grant bail excepting in two situations aforementioned. Neither of the two grounds has been urged by learned counsel for the petitioner in the case for release of the accused/petitioner on bail. On the other hand, the main thrust of his arguments was that the wife of the petitioner requires another major operation and the presence of the petitioner is necessary for the same and as such the interim bail already granted should be extended. I do not find any such ground on the basis of which the petitioner can be enlarged on bail. Since the Court has no power to grant bail on the ground of illness of the wife certainly the court has no power to grant interim bail or extension of the period of the interim bail already granted by this Court. thereforee, the bail petition in such circumstances is not maintainable, Even otherwise there is no merit in the petition. It has not been staled by the petitioner that any specific date has been fixed. Further it has not been stated as to where and in which hospital and by which doctor the surgery has to be performed and how much period is required for that purpose. Further-more it cannot be said at this stage as to how long the illness of the wife of the petitioner will continue and for how long his presence would be absolutely necessary to look after his wife. Accordingly the bail petition stands dismissed.