

Mohd Aslam Vs. the State

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Court : Delhi

Decided On : May-16-2005

Reported in : 121(2005)DLT63; 2005(82)DRJ597

Judge : Badar Durrez Ahmed, J.

Acts : Narcotics Drugs and Psychotropic Substances Act, 1985 - Sections 20, 29 and 37; Code of Criminal Procedure (CrPC)

Appeal No. : Bail Application 154/2005

Appellant : Mohd Aslam

Respondent : The State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : R.K. Giri, Adv

Judgement :

Badar Durrez Ahmed, J.

1. The charge against the petitioner is that he was found in possession of 19.9 kg of ganja and, accordingly, he is said to have committed an offence under section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'). The petitioner Along with two co-accused were said

to have been found in possession of a total amount of 48.2 kg of ganja. From co-accused, Mohd. Shahid alias Anthony Baba, a recovery of 5.8 kg of ganja is said to have been made and from Abdul Malik a recovery of 22.5 kg of ganja is said to have been made. Initially, when the FIR was registered, Section 29 was also mentioned in the offences as against the present petitioner. However, at the time of framing of charges, the charge has only been framed, in so far as the present petitioner is concerned, under Section 20 of NDPS Act. No charge has been framed under Section 29 insofar as the petitioner is concerned.

2. The learned counsel for the State opposes the grant of bail saying that a huge quantity amounting to a total recovery of 48.2 kg of ganja was recovered from the petitioner and the co-accused. If the total amount of ganja is also taken into consideration, it is far above the commercial quantity of 20 kg ganja specified under the Act and, therefore, the provisions of Section 37 of the NDPS Act would be attracted.

3. The learned counsel for the petitioner, however, submitted that since the petitioner is not charged under Section 29 of NDPS Act, only the recovery against the petitioner ought to be taken into consideration. The alleged recovery against the petitioner being of 19.9 kg of ganja, the same would not quantify to be a recovery of a commercial quantity as indicated under the NDPS Act. Accordingly, he submitted that Section 37 of the said Act would not be applicable and, therefore, the petitioner's case for grant of bail is to be considered on the same footing as other normal bail applications are considered under the Code of Criminal Procedure.

4. He submitted that the petitioner has already been in custody since 26.02.2004. The petitioner has a wife and several small children. According to the learned counsel for the petitioner, the petitioner is in the occupation of stitching/tailoring and he has been implicated in this case only because he is the son-in-law of the main accused Mohd. Shahid alias Anthony Baba to whom the postal parcels were consigned. He further submits that the petitioner does not have any other criminal antecedent and this is the first case in which he has been implicated.

5. Looking at the aforesaid facts and circumstances and considering the submissions made by the counsel for the parties as also the fact that Section 37 of NDPS Act is not attracted in this case, I direct that the petitioner be released on bail on furnishing a personal bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the concerned court. The petitioner shall not indulge in any criminal activity including any offence under the NDPS Act.

This application stands disposed of.

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