

**Ram Shankar Vs. State**

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**Court :** Delhi

**Decided On :** May-27-1993

**Reported in :** 1994CriLJ452; 51(1993)DLT65

**Judge :** Sat Pal, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 20

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 2984 of 1992

**Appellant :** Ram Shankar

**Respondent :** State

**Advocate for Pet/Ap. :** F. Paul,; Shanti Prakash and; Meera Bhatia, Advs

**Judgement :**

**Sat Pal, J.**

(1) This is a petition for grant of bail under Section 439 of the Code of Criminal Procedure.

(2) In this case Fir 223/91 was registered at Police Station Kotia Mubarak Pur under Section 20/61/85 of the Narcotics Drugs & Psychotropic Substances Act (in short the Act) against the petitioner for the alleged recovery of 150 grams of

Charas which was in the form of stick.

(3) Mr. Paul, the learned Counsel appearing on behalf of the petitioner submitted that in the present case there is a violation of Section 50 of the Act inasmuch as notice under Section 50 served on the petitioner does not bear the signatures of any witness. He further submitted that there is a violation of Section 55 of the Act also as the samples were not taken in the presence of the Magistrate. He further alleged the violation of Section 57 of the Act on the ground that the report regarding arrest and seizure was not sent to the immediate official superior. In support of his contentions, the learned Counsel relied on a judgment of the Bombay High Court in the case of Usman Haidarkhan Shaikh v. State of Maharashtra, 1991 (1) Cri777 and a judgment of Rajasthan High Court in Nathiya v. State of Rajasthan 1992 Ccr 133. He, therefore, contended that in view of the violation of the statutory provisions of the Act, the petitioner should be released on bail.

(4) Ms. Bhatia, the learned Counsel appearing on behalf of the State, however, submitted that there is no requirement of Section 50 that the notice should bear the signatures of any witness. She also submitted that the service/refusal of the notice will be proved during the course of trial of the case. She further submitted that in terms of Section 55 of the Act, the sample is not required to be drawn in the presence of the Magistrate. As regards the alleged violation of Section 57 of the Act, she drew my attention to the police diary of 22/08/1991 wherein it is stated that the A.C.P. has been informed about the particulars of the present case. The learned Counsel further submitted that charge has already been framed in this case and in view of the aforesaid facts the petitioner is not entitled to bail. In support of her submissions a reliance was placed on a Full Bench judgment of Orissa High Court reported in the case of Banka Das v. State of Orissa, 1993 Cri.L J. 442. In this judgment it has been held that the Court will not be justified by entering into an enquiry as to whether certain procedures prescribed under the N.D.P.S. Act have been complied with or not at the time of considering a bail petition.

(5) I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties. Prima facie there is no requirement that notice under Section 50 of the Act should bear the signatures of any witness. However, this point can be gone into at the time of trial of the case. As regards the alleged violation of Section 55, a reading of the aforesaid Section shows that the sample is not required to be taken in the presence of a Magistrate. The evidentiary value of an oral report given to the superior officer under Section 57 of the Act can be gone into during the course of trial. The judgment in the case of Nathiya (supra) is not applicable as in that case seized bag was opened without obtaining prior permission of the Magistrate.

(6) In view of the above discussion. I am of the opinion that this is not a fit case for grant of bail. Accordingly, the bail petition is dismissed. The observations given hereinabove will not have any bearing on the merits of the case.

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