

Ram Narayan Vs. State

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Court : Delhi

Decided On : May-24-2005

Reported in : 121(2005)DLT166

Judge : Badar Durrez Ahmed, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 37; Indian Penal Code (IPC) - Sections 279; ;Maharashtra Control of organized Crime Act, 1999 - Sections 21(4)

Appeal No. : Bail Application 1151/2005

Appellant : Ram Narayan

Respondent : State

Advocate for Def. : M.N. Dudeja, Adv.

Advocate for Pet/Ap. : Yogesh Kumar Saxena, Adv

Judgement :

Badar Durrez Ahmed, J.

1. There is an alleged recovery from the petitioner of two packets weighing 1.5 kgs and 500 gms. Both the packets were alleged to contain Heroin. Samples were taken from both these packets and were sent to the Forensic Science Laboratory

for analysis. Insofar as the sample from the packet weighing 500 gms was concerned, it did not test positive for diacetyl morphine (Heroin). So, we are only concerned with the packet weighing 1.5 kgs. The packets are alleged to have been recovered from the petitioner outside the DSOI Club at Dhaula Kuan while the petitioner was waiting to supply the same to some other person. Insofar as the sample taken from this 1.5 kg packet is concerned, the report of the Forensic Science Laboratory indicates that it contained 1.08% diacetyl morphine (Heroin).

2. However, when the contraband was produced in the trial court, the counsel for the petitioner found that there were some differences in colour in the allegedly recovered Heroin and what was actually produced in court. Accordingly, an application for re-examination of the sample was moved before the learned Additional Sessions Judge. That application was disposed of by an order dated 27.09.2004 wherein the court directed that, in the interest of justice, the duplicate sample marked 'B' be sent to the Forensic Science Laboratory, Rohini for re-examination. Pursuant to this order, the said sample marked 'B' was sent for re-examination and the Forensic Science Laboratory, Rohini submitted a report indicating that on Gas Chromatography examination exhibit 'B' was found to contain diacetyl morphine 0.8 percent.

3. In this view of the matter, the learned counsel for the petitioner submitted that the differences in the contents of diacetyl morphine in samples drawn from the said 1.5 kg packet cast serious doubts on the recovery itself. It also becomes doubtful as to whether the alleged packets recovered were the same as were shown as case property. The learned counsel for the petitioner also submitted that the petitioner had no criminal antecedents. In view of these submissions, the learned counsel for the petitioner requested that the petitioner be granted bail.

4. The learned counsel for the State opposed the grant of bail. He firstly submitted that because of the recovery of 1.5 kgs, the provisions of Section 37 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as 'the NDPS Act') would come into play. He then submitted that the questions with regard to differences in the test reports of the Forensic Science Laboratory cannot be gone into at this stage and will be looked into at the time of the trial of the case.

He submitted that the recovery was made from the petitioner and whatever be the percentage content of Heroin in the samples, it is clear that the said 1.5 kgs. packet did contain diacetyl morphine (Heroin) and, since the recovery was of an amount in excess of 250 gms. The same was a commercial quantity and, therefore, in view of the provisions of Section 37 of the NDPS Act, the petitioner was not entitled to be released on bail.

5. I have considered the arguments advanced by the learned counsel for the petitioner as well as the learned counsel for the State. Insofar as the applicability of Section 37 of the NDPS Act is concerned, without going into the question of percentage of the Heroin found in the substance, it may be assumed that the same is applicable in this case. However, the fact that Section 37 of the NDPS Act applies to a particular case does not mean that the accused in such a case would not be entitled to bail per se. What is necessary for the court examining the question of grant of bail where Section 37 applies is that the court should be satisfied having regard to the material available on record that there are sufficient grounds that the petitioner may not be convicted. If the probabilities are that the petitioner may not be convicted, then the court can grant bail subject to the further condition being satisfied that the petitioner is not likely to commit any offence while on bail. However, if the court is satisfied looking at the probabilities of the case that the petitioner is likely to be convicted, then the question of grant of bail would not arise. This is what has been held by the Supreme Court in the case of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* and another: AIR 2005 SCW 2215 while considering the provisions of Section 21 of the Maharashtra Control of organized Crime Act, 1999. The provisions of Section 21 of the latter act are in pari materia with the provisions of Section 37 of the NDPS Act. Para 49 of the said Supreme Court decision reads as under:-

'49. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it

a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite means *rea*. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the *sine qua non* for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

6. In the backdrop of the foregoing principles, I find that the differences in the test results of the samples taken from the very same packet cast doubts on the issue as to whether the case property is the same as what is alleged to have been recovered from the petitioner. This is not a definite finding and that would come at the time of trial. However, on the basis of the materials brought on record, there is every likelihood that the petitioner may not be convicted in this case. It is further to be examined as to whether there is any likelihood of the petitioner committing any offence while on bail. In this regard, the Supreme Court in the aforesaid decision, held that the satisfaction of the court as regards the likelihood of not committing any offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. It further held (in paragraph 55 of the said report) that since it is difficult to predict the future conduct of the accused, the Court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and the manner in which he is alleged to have committed the offence. The present petitioner has no criminal antecedents and nothing has been indicated to show that the petitioner has a propensity to commit any offence under the NDPS Act.

7. It is, therefore, clear that the mandatory conditions for grant of bail under Section 37 of the NDPS Act (as observed in the case of Union of India v. Ram Samujh: 1999 (3) C.C. C (SC) 22) stand satisfied. Accordingly, I direct that the petitioner be released on bail on furnishing a personal bond in the sum of Rs.1 lakh with one surety of the like amount to the satisfaction of the concerned court. It, however, goes without saying that the findings recorded by this Court are only tentative in nature and the trial court is free to decide the case on the basis of evidence adduced at the trial without in any manner being prejudiced by any observations made in this order.

The application stands disposed of.

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