

Surender Kumar Vs. State

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Court : Delhi

Decided On : Mar-25-1994

Reported in : 1994IIAD(Delhi)116; 1994(29)DRJ65

Judge : V.B. Bansal, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 57;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous Appeal No. 2852 of 1993

Appellant : Surender Kumar

Respondent : State

Advocate for Pet/Ap. : K.K. Sud and; O.P. Faizi, Advs

Judgement :

V.B. Bansal, J.

(1) Surender Kumar has filed this application for bail for the offence under Section 15 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as 'the Act').

(2) Briefly stated the prosecution story has been that on 6.6.1991, Si A as Mohammed while accompanied by other police officials was present near Dda

Quarters, H Block in connection with a case and at about 5.15p.m., when he received a secret information that one person would be coming with some drugs at about 7.15p.m. and could be apprehended. Raiding party was accordingly organized by the Sub Inspector in which, one A. Ahmed was joined from the public besides police officials. The petitioner was apprehended at the pointing out of the informer and the petitioner was informed about information available with the police officials and that he was informed that if he wanted he could be searched in the presence of a gazetted officer or a magistrate. This offer was, however, declined by the petitioner, who was then searched and was found having 2 Kgs. of opium. Sample was taken out and property was seized after following the procedure.

(3) Learned counsel for the petitioner has submitted that there has been non-compliance of the provisions contained in Section 57 of the Act in as much as full report of all the particulars of the arrest and seizure of the case property was not sent to the immediate superior officer, on account of which, the petitioner is entitled to bail and even to be acquitted and thus, this is a sufficient ground for release of the petitioner on bail. He has also submitted that the petitioner has in fact been prejudiced on account of the non-sending of such a report as there was sufficient chance available to the I.O. to make improvement in the prosecution story. He has also submitted that there has been an inordinate delay in the disposal of the case and this also is a sufficient ground for the release of the petitioner on bail. He has placed reliance upon the case of Mohammed Ahsan versus State 1994 Jcc 49 and Babu Rao versus State of Karnataka 1993 (1) Crimes 865.

(4) Learned counsel for the respondent has opposed this application and submitted that merely because the report in writing was not sent to the Sr. Officers, has not caused any prejudice to the petitioner and keeping in view the heavy recovery, it is a case where this application should be dismissed.

(5) I have given my thoughtful consideration to all these submissions and am clearly of the view that no case has been made out for release of the petitioner on bail. The law is now well settled that Section 57 of the Act is mandatory and in

case there is non-compliance of this provision or if there is delay in sending the requisite information to the superior officer, the matter has to be examined to Find out as to whether any prejudice has been caused to the accused by such a failure. Reference in this regard can be made to the case State of Punjab versus Balbir Singh : 1994 CriLJ3702 . Merely to say that the accused has been prejudiced on account of non-sending of a special report would not be sufficient to hold that there is a prejudice to the petitioner. This fact will have to be gone into by the learned trial court. Suffice it to say at this stage, that all the details of the incident are contained in Fir and its copies are send to the Senior Officers including the Ilaqa Metropolitan Magistrate and the Assistant Commissioner of Police.

(6) A perusal of the Fir shows that the mandatory provision contained in Section 50 was complied with but what was the actual position, will be decided by the learned trial court.

(7) In view of my aforesaid discussion, the application has no force and the same is, therefore, dismissed. Learned trial court would, however, expedite the disposal of the case.

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