

Abda Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-05-1988

Reported in : 1988(2)WLN443

Judge : Inder Sen Israni, J.

Appeal No. : S.B. Cr. Misc. II Bail Application No. 2033 of 1988

Appellant : Abda

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Jagdeep Dhankar

Disposition : Application dismissed

Judgement :

Inder Sen Israni, J.

1. This is second bail application filed by the petitioner. The first bail was rejected on 12-2-1988 by a detailed order.
2. The petitioner is facing trial for the offence under Section 20(II), 21, 22 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short the Act, 1985).
3. The contention of Shri Jagdeep Dhankar, learned Counsel for the petitioner is that the petitioner was taken in custody on 27-8-1987 and since then is in jail. It is

pointed out that he has no conviction to his discredit and that there has not been progress in the trial of the case. It is also pointed out that it is alleged by the prosecution that the petitioner at the time of arrest was having two kg. Charas. According to the learned Counsel, the investigation samples weighing 30 gms. of the Drugs were sent for analysis but the samples when reached to the Forensic Science Laboratory were of 25 gms. This, it is asserted, is a material discrepancy which demolishes the entire prosecution case against the petitioner. It is also contended that the petitioner also deserves to be released on bail in view of his good character and antecedents. Reference has been made to the case of Gopal v. State of Rajasthan (SB Cr. Appeal No. 333/88), in which the accused, who was charged to have committed offence under the NDPS Act, 1985, was acquitted on the ground that while the prosecution alleged to have sent sample of 30 gms. for analysis but the report showed that the sample was of 23 gms. only. However, it may be pointed that in the above case it was pointed out by the learned Judge that the prosecution had failed to prove that the packet containing Drug sent for analysis had been properly sealed and reached the Forensic Science Laboratory in intact condition or not, created doubt and benefit of the same was given to the accused.

4. In case of Munna alias Mahendra and Anr. v. State of Rajasthan 1988 RCC 323, it was said by this Court that right to fair trial within reasonable time is a constitutionally protected right. Infringement of that right in appropriate case is sufficient to quash conviction or to stop further proceedings. This was a case in which during the trial in Sessions Court, the prosecution made a prayer that as a revision petition was pending in the High Court, the prosecution does not want to proceed with the evidence till the revision petition is decided by this Court, as it was likely to prejudice the case of prosecution. Therefore, the prosecution did not record its evidence for quite some time. The learned Judge has also pointed in the above case, several grounds to show that the delay in the trial was caused by the prosecution even though the accused were anxious to proceed with the trial. Reliance has also been placed on Laxman Singh v. State of Rajasthan Cr. LR 1987 (1) 716 that the accused-petitioner was released on bail on account of delay in trial when not a single witness was examined on behalf of prosecution for a long time.

5. In *Anurag Baitha v. State of Bihar* AIR 1987 (Patna) 247, was a case in which the grant or refusal of bail in substantive appeal of capital charges pending in the High Court was considered by the Full Bench of the Patna High Court. It was observed that if Article 21 of the Constitution of India and the right to speedy trial is not merely a twinkling star in the heavens to be worshipped and rendered vociferous lip service only, but indeed is an actually meaningful protective provision, then a fortiori expeditious hearing of substantive against convictions is fairly and squarely within the mandate of the said Article. It is, therefore, urged by the learned Counsel that keeping in view the circumstances including the delay in trial, the petitioner is entitled to be released on bail.

6. The contention of learned Counsel for prosecution Shri S.P. Tyagi is that the petitioner is a member of a dangerous gang which at the time of arrest was armed with Automatic Self-Loading Gun with magazine of foreign make, 4 pistols of foreign make and the magazine made in Pakistan, and about 550 live cartridges of pistols and rifle. There were three-accused persons in the truck which was intercepted and 28 kgs. Charas in total was recovered from the said truck. One of the accused persons, Mahendra, could not be arrested on the spot and was declared to be absconding. This delayed the trial of the case even though the charge-sheet was filed on 23-9-1987. It is urged by the learned Counsel that the petitioner is a smuggler and a member of dangerous gang and there is very chance of his absconding if he is released on bail as he lives near the border of Pakistan. Such smugglers, it is contended, can jump bail of any amount and once this takes place the trial of the whole case will be obstructed. The learned Counsel pointed out to the various hearings that have taken place from 23-5-1988 and pointed out that the case was fixed for framing of charge on 23-9-1988. It is also contended that there are only 17 witnesses and he was confident that the trial shall be concluded within a period of 9 months.

7. From the facts and circumstances it cannot be said that the trial has been deliberately delayed on account of lethargy of the prosecution. Merely because there has been delay in trial of the case it does not lead to the conclusion that in every such case, the accused-petitioner becomes entitled to be released on bail after passing one year from the date of arrest as has been urged by the learned

Counsel for the petitioner. The circumstances on account of which there has been some delay in the trial have been fully explained and justified by the learned Counsel for the prosecution. When question of delay in trial arises in a particular case, every such case has to be dealt with on the facts and circumstances pertaining to that matter. So many questions arise for consideration in this connection. It has to be considered whether the delay was inevitable in the peculiar circumstances of the case. Whether the delay has been caused deliberately by the prosecution and whether the prosecution is proceeding with the trial of the case in lethargic and non-serious way. It will be also necessary to see whether the delay has been caused by some undesirable tactics adopted by the defence. Some times it may be beyond the control of prosecution to proceed as expeditiously with the trial as may be desirable, keeping in view the restraints placed on the liberty of the accused. Apart from all this it will be also necessary to see whether, keeping in view all the facts and circumstances of the case pointed out, the delay was sufficient to enlarge the accused on bail. It can be said that all these questions ultimately revolve around the question whether the trial is proceeding in fair and proper manner which is also the essence of principles of natural justice.

8. In case of *Raghubir Singh and Ors. v. State of Bihar* reported in : 1987 CriLJ157 it was observed by the Apex Court that 'the course of justice may be evaded or attempted to be evaded by leaving the country or going under-ground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts.'

9. The petitioner has. been arrested and according to the prosecution was found in possession of drugs while proceeding in a truck from which and large quantity of drugs was recovered. Apart from this the accused-persons were armed with sophisticated weapons very large quantity of ammunition was also recovered from the truck. One of the accused-person is also absconding and the police has not been able to arrest him as yet. The prosecution is also apprehensive that the petitioner who is charged with serious offence, of smuggling may abscond and jump the bail irrespective of amount of surety that may be fixed. He is a person who lives near the border of the Pakistan.

10. Keeping in view the facts and circumstances and the legal position discussed above, I am not inclined to grant bail to the petitioner. As already stated the learned Counsel for the prosecution has assured the Court that the trial will be completed in all respects within a period of 9 months from date of this order.

11. In the result, the bail application is rejected. Copy of this order be sent to the trial Court immediately.

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