

**Daud Ali Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-25-1993

**Reported in :** 1994(2)WLC67; 1993WLN(UC)535

**Judge :** N.L. Tibrewal, J.

**Appeal No. :** S.B. Criminal Miscellaneous Second Bail Application No, 5391 of 1993

**Appellant :** Daud Ali

**Respondent :** The State of Rajasthan

**Judgement :**

**N.L. Tibrewal, J.**

1. Petitioner-Daud Ali has filed this second application for his bail Under Section 439, Cr.P.C. The earlier one was rejected by this Court on August 10, 1993. The earlier bail application was decided on merits of the case. The accusation against the accused-petitioner is that he was found in possession of 25 gms. of smack, on the search of his body, on May 15, 1993.

2. It is urged by the learned Counsel that the petitioner was falsely implicated, as he was having inimical relations with Deputy Superintendent of Police (Dy. S.P.) Shri Surendra Nath. Learned Counsel further contended that after his arrest,

telegrams were sent to the Higher Authorities, stating therein that the petitioner was falsely implicated in the case. Then, it was contended that the report of chemical examination of the sample from Forensic Science Laboratory (for short, 'FSL') has not been received so far and the trial is likely to be delayed.

3. I have given my anxious consideration to the above submissions, Section 37(1)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, 'NDPS Act') provides that no persons accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail on his own bond unless: - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; & (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

4. As per prosecution case, the Dy. S.P. Bhawani-Mandi, on getting information that the petitioner was selling smack, went to the spot and found him there. On his search, 25 gms. of smack was recovered from his possession. At this stage, it cannot be said that there are reasonable grounds for believing that the petitioner is not guilty of the offence, for which he has been arrested and simply because some telegrams were given to the higher authorities, after his arrest, no inference can be drawn that he was innocent. After registration of the case, the police investigated the matter and has filed a charge-sheet.

5. Another limb of the argument relates to the delay in the trial. It is true that the accused, who is in jail, has a right to have expeditious trial and, now it is a settled proposition of law that this right is a fundamental one. In a given case, if the detention of the accused is found unreasonable and violative of Article 21 of the Constitution, he can be released on bail. A Division Bench of this Court has taken the view that this rule applies, even in NDPS cases. But, the question is whether the detention of the petitioner, in the instant case, is to that extent that it violates Article 21 of the Constitution. I am of the considered opinion that it is not so. The petitioner was arrested on May 15, 1993 and he is involved in a serious case. For the petitioner's complaint of not receiving FSL report, it may be stated that in S.B.

Criminal Misc. Bail Application No. 4591/93, on the direction of this Court, Dr. B.D. Mishra, Additional Director (Chemical), Forensic Science Laboratory, intimated this Court that, in special circumstances, the samples can be examined on priority basis, out of turn, provided the Department is intimated by the District Superintendent of Police or the concerned Court, giving special circumstances, which required examination of the sample, on priority basis. Dr. Mishra also stated that in cases, where the accused are in jail, on getting information/request from the S.P. or the Court concerned, the Department would examine the sample/s out of turn and make the report available within a specified time.) He also brought to my notice that in the normal course, the FSL report cannot be available on an early date, as the samples are examined as per their turn and it takes about 12 months, when the turn comes, due to heavy work load.

6. The delay in the examination of the samples, therefore, takes place, because the concerned Police Officer/Court does not intimate the Director FSL, about the fact of the accused being in jail. The contention of the petitioner's counsel cannot be disputed that the samples in criminal cases, where the accused are in jail, should be examined/analysed on priority basis, out of turn. I, therefore, think it proper that a direction be issued to all the District Superintendents of Police/Investigating Officers and Special Courts, constituted under NDPS Act and all District & Sessions Judges that, in cases, where the accused are in jail, they should make such request to the Director/Additional Director, Forensic Science Laboratory to examine the samples out of turn on a specified date. I hope and trust that if such request is made, appropriate efforts shall be made by the Authorities to examine the samples out of turn, on priority basis. It should be the concern of all, i.e. the Investigating Agency, the Prosecuting Agency and the concerned Court that the accused involved in serious cases, are not released due to their inaction in not making efforts to get the FSL report at an early date.

7. While rejecting this bail application, I direct that a copy of this order be sent to the Director/Additional Director, Forensic Science Laboratory, with a direction to make suitable arrangements to examine the sample/samples of the articles in the criminal case/cases, in which the accused is/are in jail and a request is made for early examination of the sample. A copy of this order be also sent to the Director-

General of Police, Rajasthan, Jaipur to issue proper circular to all the District Superintendents of Police/SHOs./Investigating Officers of the Police Stations, in the light of the above order, to be vigilant to get the FSL report in time and make request to the Director/ Additional Director, Forensic Science Laboratory to examine the sample/samples out of turn, on priority basis. A copy of this order be also sent to all the Presiding Officers of the Special Courts, constituted under NDPS Act/ District & Sessions Judges, for doing the needful. The above direction has been felt necessary, as I have come across the cases that the samples, in NDPS cases are not examined for one year or so and the accused claim their release on this technical ground.

8. In the instant case, if the FSL report is not received as yet, the trial Court shall make efforts to get the same from the Department. Then, the charge shall be framed, if the same is made out, after hearing the learned Counsel for the accused and the trial court shall expedite the trial in the case. The trial Court shall make efforts to complete the trial within six months, after the charge/s is/are framed. A copy of this order be also sent to the concerned trial Court.

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