

Bhola Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/763994

Court : Rajasthan

Decided On : Aug-17-2005

Reported in : RLW2005(4)Raj2723; 2005(4)WLC513

Judge : Narendra Kumar Jain, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 8, 20, 21 and 29; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : S.B. Cr. Misc. IIIrd Bail Application No. 3962 of 2005

Appellant : Bhola

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : Harendra Sinsinwar, Adv.

Judgement :

Narendra Kumar Jain, J.

1. Heard learned Counsel for the petitioners as well as the learned Public Prosecutor and perused the material/case diary made available to me during the arguments of the case.

2. This is third bail application under Section 439 Cr.P.C. The first bail application was dismissed by this Court on the basis of statement of learned Public Prosecutor to the effect that as per details available in the case diary, four other criminal cases are pending against the petitioner. The second bail application was dismissed as withdrawn with liberty to file fresh bail application before the trial Court.

3. Learned Counsel for the petitioner submits that quantity of contraband article recovered in the present matter is lesser than the small quantity as mentioned in the notification issued under Section 2 of the N.D.P.S. Act and the same is punishable with sentence of rigorous imprisonment for a term of six months whereas the petitioner has already undergone imprisonment for a term of more than six months upto now as petitioner was arrested way back on 12th Feb., 2005. His further submission is that from the order dated 13th July, 2005 passed by the Special Judge, N.D.P.S. Cases, Bharatpur, it is clear that even charge has not been framed in the matter, therefore, trial is not likely to be concluded shortly. He also submits that although initially three other criminal cases were registered against him but out of them, he has now already been acquitted in two cases.

4. Learned Counsel for the petitioner also submits that there are other co-accused persons in the present matter, who are on bail and are facing trial with the petitioner, therefore, he is not even in a position to confess about the offence before the trial Court otherwise he would have confessed and the maximum sentence, which could have been awarded in the case was only six months and the petitioner has already undergone for a term more than six months.

5. Learned Public Prosecutor does not dispute that contraband article recovered in this case is of lesser than small quantity and the petitioner has already been acquitted in two other criminal cases registered against him, which were pending against him while rejecting first bail application on the basis of pendency of other criminal cases.

6. No doubt that pendency of the criminal cases against an accused is an important and relevant factor while considering his bail application but at the same time it is also relevant to consider that if an accused has already undergone

imprisonment for a maximum term of sentence prescribed in the Act itself for the alleged offence against him and even charge has not been framed in the matter, while considering the bail application of the accused under Section 439 Cr.P.C. The petitioner was arrested on 12th Feb., 2005 and he completed term of imprisonment of six months on 12th Aug., 2005. Even if, the petitioner would have confessed the charge, he would have been punished for a maximum sentence of rigorous imprisonment for a term of six months which he has already undergone upto now.

7. After considering all the facts and circumstance of the case arid without expressing any opinion on merits and demerits of the case, I consider it just and proper to allow this application and order to release the accused petitioners namely; Bhola on bail under Section 439 Cr.P.C. in FIR No. 525/2004 Public Station Mathura Gage, Bharatpur registered under Sections 8/20, 8/21 & 8/29 of the NDPS Act provided, he furnishes a personal bond in the sum of Rs. 25,000/- together with one surety of the like amount to the satisfaction of the learned trial Court for his appearance before that Court on all subsequent dates of hearing and as and when called upon to do so.