

Bhola Ram Vs. State of Rajasthan

Bhola Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/764311

Court : Rajasthan

Decided On : Mar-31-1999

Reported in : 1999CriLJ2729; 2000(1)WLC638; 1999WLC(Raj)UC682; 1999(1)WLN181

Judge : Arun Madan, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 21, 50 and 320; [Evidence Act, 1872](#) - Sections 27; Code of Criminal Procedure (CrPC) - Sections 161 and 439

Appeal No. : Cri. Misc. Bail Appln. No. 1364 of 1999

Appellant : Bhola Ram

Respondent : State of Rajasthan

Advocate for Def. : Madhav Mitra, Adv.

Advocate for Pet/Ap. : Alok Sharma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Arun Madan, J.

1. I have heard learned counsel for the petitioner as well as the learned Public Prosecution and also perused the documents available on the record.

2. The gravity of the charge against the petitioner is that on an information being made available to the Investigating Police, raiding party was organized to conduct the search in the hotel premises namely; Blue Moon Hotel, Pushkar, Ajmer where three Nepali youths namely; Avinash, Govind and Kamal were staying who were allegedly in possession of various quantities of Charas ranging from 400 gms. to 600 gms. along with Rs. 10,000/- each on every one of them. They were arrested and booked for offence under Section 8/21 of the NDPS Act 1985 for short 'the Act' pursuant to FIR No. 9/99 registered with P. S. Pushkar, Distt. Ajmer on the basis of which, the investigation commenced. The entire seizure operation against three above named accused was carried out from 10.00 a.m. to 11.00 a.m. The accused were interrogated and their statements under Section 161, Cr. P.C. were recorded. Recovery of Charas was also effected from the accused-applicant Bholaram, who was booked for offence under Sections 8/21 of the Act. On an application moved before the learned trial Court for release of the petitioner on bail, the trial Court declined the petitioner's request for releasing him on bail vide its order dated 6-3-1999. Thereafter, the petitioner had preferred the present bail application before this Court which after hearing learned counsel for the parties is being finally disposed of today.

3. Mr. Alok Sharma, learned counsel for the petitioner has vehemently contended at the bar that recovery of 180 gms. of Charas which was effected from the petitioner cannot be attributed to him without compliance to Section 27 of the Indian [Evidence Act, 1872](#) for short 'the Act of 1872' which stipulates, as under :-

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer. So much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

4. The second contention of the learned counsel for the petitioner is that any statement made by an accused to the investigating Police during the course of interrogation is inadmissible in evidence without corroboration by any independent witness.

5. His third contention is that if any recovery was made from the accused like the contraband of 180 gms. of Charas in the instant case, it cannot be connected to the accused in any manner since it was on the information made available to the concerned Investigating Officer by co-accused Avinash, Govind and Kamal.

6. His fourth contention is that in any event, the petitioner who is running a hotel in the name and style of Blue Moon Hotel, Pushkar, Ajmer is frequented by large number of people and that the recovery of the contraband was effected from an open place and therefore, chances of planting of contraband as well as false implication cannot be ruled out since the recovery from the open place has very little probative value.

7. His fifth contention is that the safeguards which are to be made available as per the provisions of the Indian [Evidence Act, 1872](#) for short 'the Act of 1872' in the matter of interrogation of the accused have not been strictly observed in the instant case.

8. In order to verify the probative value of the aforesaid contentions advanced by the learned Counsel for the petitioner during the course of hearing. I have also examined the case diary which was made available to this Court by the learned Public Prosecutor. From the perusal of the impugned order dated 6-3-1999, passed by learned Sessions Judge, Ajmer by which the petitioner's bail application under Section 439, Cr.P.C. was rejected, it is apparent that the prosecution had adopted all safeguards in compliance to the provisions of the Act of 1872 and also to the provisions of Section 50 of the NDPS Act inasmuch as, prior to initiation of proceedings as per the provisions of the Act of 1985, a notice in compliance with the provisions of Section 50 of the said Act was duly served upon the petitioner by the Investigating Officer of Police Station Pushkar, Ajmer on 15-1-1999. From the perusal of the said notice, it is apparent that the concerned IO had taken all necessary steps in the matter of conducting investigation by Devi Singh, I.O.

inasmuch as, he had also included two independent witnesses namely : Raju and Pappu who were available during search conducted in the hotel premises of the accused-petitioner and to whose presence, the petitioner had not objected. This fact is also corroborated from the statements of the aforesaid witnesses which were recorded by the 10 on the date of seizure itself viz. 15-1-1999. Both the said witnesses in their statements have prima facie attributed the role to the petitioner as regards the recovery of 180 gms. of charas from his hotel premises. Hence, in my view the chances of false implication are altogether ruled out in the instant case. Be that as it may, since the challan has already been filed before the concerned trial Court on 10-2-1999, in my view, no purpose will be served by releasing the accused-petitioner on bail at this stage, since the accused-applicant and also the co-accused who have already been arrested earlier are yet to be tried for offence under Sections 8/21 of the NDPS Act. In my view, the accused shall be given fair opportunity of leading evidence in their defense by contesting the prosecution case. My observations are fortified from the judgment of the Apex Court in the matter of Maktool Singh v. State of Punjab, 1999 (2) JT SC176 : 1999 Cri LJ 1825, wherein the Apex Court has observed that powers in the matter of grant of bail by the High Courts in cases pertaining to NDPS act are to be very sparingly exercised. Section 320 of the Act of 1985 has overriding effect with regard to the powers of suspension, commutation and remission provided under the Code of Criminal Procedure. The Apex Court as a temporary measure has directed the Registry of each High Court to include every appeal (against conviction of offences under the Act) in the hearing list as soon as such appeal becomes ripe for hearing.

9. Hence, I do not find any force in the contentions advanced by the learned counsel for the petitioner in the matter of grant of bail to the petitioner. The bail application is accordingly rejected. Since the challan has already been filed, I have and expect that the learned trial Court shall expeditiously deal with the case.