

M. Prabhulal Vs. Asstt. Director, Revenue Intelligence, Tiruchy

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Court : Chennai

Decided On : Mar-02-1994

Reported in : 1994(71)ELT663(Mad)

Judge : N. Arumugham, J.

Appeal No. : Crl. O.P. No. 14061 of 1993

Appellant : M. Prabhulal

Respondent : Asstt. Director, Revenue Intelligence, Tiruchy

Advocate for Def. : Mr. P. Rajamanickam, Central Govt. Public Prosecutor

Advocate for Pet/Ap. : Mr. K. Sengottian, ;Adv., for M/s. S. Kanakarajan, ;S. Annadurai and ;U. Karthikayan, Adv.

Judgement :

ORDER

1. Heard. The petitioner herein was arrested by the respondent, an Investigating Agency, authorised by the Narcotic Drugs & Psychotropic Substances Act, 1985 hereinafter referred to as 'the N.D.P.S. Act', on 16-5-1993 at his residence at Trichirapalli town, for the alleged offences under Sections 8(c), 21, 23 and 29 of the N.D.P.S. Act, followed by the interrogation, recording the statements, he was lodged to judicial custody on 18-5-1993 and since then onwards he was confined to be behind the bars as a remanded prisoner.

2. The facts leading to the arrest of the petitioner, according to the respondent, is that, he is the brain behind the whole episode of transporting 361.6 Kgs. of Opium valued at Rs. 36,16,000 and 66.1 Kgs. of Heroin valued at more than Rs. 132 crores through a lorry to Sri Lanka from India, and that it was intercepted on 15-5-1993 at Thalapallam Village, near Salem and found detected, and that pursuant to the same, several persons including the Driver, Cleaner and occupants of the said lorry as well as the occupants of an Ambassador Car following the said lorry, supposed to be the persons going as escorts, were also secured and interrogated. The investigation reveals, according to the respondent, that a criminal conspiracy was hatched out by the petitioner herein along with his own brother Shivanarain and his close associates Loganathan and other co-accused. For the limited purpose of this application. I do not propose to extract the various contents of the voluntary confession statements, recorded by the respondent. Enough for me at this stage, to say, that on perusal of the voluntary confession statements recorded from the petitioner as well as his own brother Shivanarain, Loganathan and two others, it is seen, that the prima facie possibility of the petitioner involved in the offence in this case cannot be ruled out, for the reason that when the petitioners was lodged before the Judicial Magistrate, nothing has been recorded by him adverse to his conduct of giving confession. This position has been clearly identified as has been laid down by the Courts of law clearly. The said confessions are materials, deemed to be legal evidence available, totally adverse to the petitioner herein, as an information collected under Section 67 of the N.D.P.S. Act. Under the circumstances, it is thus seen that there are ample and adequate materials and legal evidence collected by the respondent and very much available totally against the petitioner herein regarding his direct involvement.

3. The only contention though strenuously urged by Mr. K. Sengottian, learned counsel appearing for the petitioner is that following the view held by this Court, that Section 57 of the N.D.P.S. Act has not since been complied with, which is mandatory in nature, the petitioner is entitled to be enlarged on bail, for the presumption necessarily arises that he has not committed the offence, or is not likely to commit the offence as laid down by the Supreme Court in *Narcotics Control Bureau v. Kishan Lal & Others*, : 1991 CriLJ654 . On an earlier occasion, an attempt was made in this regard on behalf of the same petitioner for bail. But,

however, the said ground has not been taken and that even so, the said attempt has been negated by this Court.

4. Mr. P. Rajamanickam, learned Standing Counsel for the respondent besides filing his counter-affidavit as well as additional counter-affidavit, raised two contentions while controverting the ground projected by Mr. Sengottian, learned counsel on behalf of the petitioner, which are the following :-

(1) irrespective of any laches or technical defects though committed by the Investigating Agency, the very object and purpose of making the provision of the N.D.P.S. Act so stringent by the Statute clearly demonstrates the fact that the non-compliance cannot have a riddle over the ratio decided by the Apex Court in Narcotics Control Bureau v. Kishan Lal & Others : 1991 CriLJ654 and (2) the non-compliance of Section 57 of the Act though deemed to be mandatory in nature, warranting the circumstances necessara to hold that it causes prejudice to the accused by such non-compliance, in the absence of such prejudice, it is not safe to take it as a mandatory violation and that even so, Section 37(b) of the N.D.P.S. Act totally and clearly overrides and takes away the very right of the accused for the offences under the N.D.P.S. Act.

5. Fortunately for me, either the Bar or the Counsel for the respondent has not argued and contended before me that in the context of Section 37(b), the power of the High Court while granting bail has been totally taken away. Even so, at this moment, I had to advert to the authority and well settled law by the Apex Court of this country in Narcotics Control Bureau v. Kishan Lal & Others : 1991 CriLJ654 . The Supreme Court never said that the High Court has no power at all to exercise the power to grant bail. But what was enunciated in the above-cited case was if such of the offences come under the category of Section 37(b) of the N.D.P.S. Act, then after hearing the Public Prosecutor and his opposition and if the Court comes out with a presumption that the accused has not committed an offence and further not likely to commit any offence then with certain conditions the Court can grant bail. Of course, it is true, following the said principle, this Court in CrI. O.P. No. 13001 of 1993 dated 2-12-1993, has held that the non-compliance of the obligation cast in Section 57 of the N.D.P.S. Act particularly, and namely the

sending of the special report pertaining to the arrest of the accused to his immediate superior officer, amounts to a mandatory violation, as it merely provides a check for the Investigating and Arresting Officers concerned not to foist a false and frivolous case and to involve innocent persons with major deviation and embellishment made subsequently. But the first point raised by the learned Standing Counsel for the respondent before me in the instant case has not been brought to my notice nor argued, when this Court delivered the order in the above case. As I have observed already, with regard to the power vested to this Court in granting the bail under Section 37(b) of the N.D.P.S. Act is concerned, there is a limitation, provided under Section 37(b) of the N.D.P.S. Act as was held by the Apex Court in the above case law. In this context, if Section 57 of the N.D.P.S. Act is taken as mandatory and its non-compliance for a particular person, accused of an offence under the N.D.P.S. Act, it may safely be held that the non-compliance of Section 57 of the N.D.P.S. Act, is only a technical one, in the sense, that a mere sending of a special report to the immediate superior officers may not amount to a serious prejudice, but, however, provides a check for such an officer or Investigating Agency from malpractice of any nefarious activities. Otherwise, if the allegation is fastened, it is only a technical one. Such concept though held mandatory, it is made clear, that inasmuch as it does not create any prejudice, in the context of other overwhelming evidence and materials collected against the accused, then, non-compliance of the same may not cause any presumptions prejudice to the accused.

6. Several case laws have been cited on behalf of the Bar as well as on behalf of the respondent. It is the well settled judicial view that while conducting a search or seizure either under the Code of Criminal Procedure or under the special statute for the purpose of considering the bail if the materials and the evidence collected during that time are deemed to be a legal one irrespective of the same that has been done, if there are certain irregularities in the searches or seizures, then the Courts of law are not bound to give weight to such irregularities and at the same time, ignore the legal evidence. This legal ratio is based not on the basis of rule of legal evidence, but purely on the basis of rule of prudence and fair play and as was clearly spelt out by the Supreme Court in very many cases. If this is the view held by the Apex Court and followed by several Courts in our land, in view of the

increasing tendency of the offences under the N.D.P.S. Act being crept in, in international level as an imminent menace to the whole society of mankind, it cannot be said for a moment that a mere technicality can prevail and not the rule of prudence and fair play.

6A. While importing the said legal thesis as enunciated by the Apex Court into the facts on hand, I am able to identify the admissibility and availability of the voluntary confession statement of not only the petitioner, but also his own brother living along with him and Loganathan and other persons. Above all, the contraband seized and made involved in this case is very huge and perhaps this is one of the case in which the contraband involved in smuggling and transporting of the drug in menace to this court. It is thus identified that there are other overwhelming evidence which is directly available against the petitioner herein. In the midst of such overwhelming evidence the non-compliance of sending a special report as provided under Section 57 of the N.D.P.S. Act, in my considered view, merely amounts to a mere technicality and as such, cannot produce any amount of prejudice to the petitioner herein. While stating so, I have identified that a special report with regard to the arrest of the petitioner has not been intimated and followed.

7. But, in connection with the first contention, raised on behalf of the respondent, I am totally unable to persuade myself to countenance his view for the reason that it goes to the very root of the power vested with this Court under Section 37(b) of the N.D.P.S. Act. Enough for me at this stage to hold that this Court has ample power to exercise its power for granting bail, but subject to the limitation provided under Section 37(b) of the Act as was clearly spelt out by the Supreme Court in Kishan Lal and Others case, stated supra : 1991 CriLJ654 . In these circumstances, I do not find any need or necessity to traverse each and every one of the case laws relied on, on behalf of the respective parties herein.

8. In the result, I have to hold that there is no material available in favour of the petitioner to have an escape from the clutches of Section 37(b) of the Act and that for the said reason, the petition for bail is hereby dismissed.

