

P.T. Joseph Vs. State

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Court : Chennai

Decided On : Feb-03-1999

Reported in : 1999(108)ELT338(Mad)

Judge : B. Akbar Basha Khadiri, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 37, 37(1) and 67; [Code of Criminal Procedure \(CrPC\) , 1973](#); Evidence Act - Sections 17 and 27

Appeal No. : Criminal Original Petition Nos. 20072, 20689 and 22477/98

Appellant : P.T. Joseph

Respondent : State

Advocate for Def. : P. Rajamanikam, Special Public Prosecutor

Advocate for Pet/Ap. : M. Krishnaveni, ;Gita Asokan and ;S. Sharmughavelayutham, Advs.

Judgement :

ORDER

B. Akbar Basha Khadiri, J.

1. The petitioners are seeking bail. All the petitions have arisen in this way :-

A consignment of 14 packages of leather jackets under Bill No. 020-21551592, dated 10-11-1997 by . Sri Ram Leather Exports, No. 99, Dr. Muthulakshmi Road, Porur to . Arnado Leathers, Johenasburg, South Africa, through Lufthansa Flight No. LH-0511 scheduled to take off on the night of 13-11-1997 was intercepted by the respondent and on examination, it was found containing 382.043 Kgs. of Mandrax tablets and 14.618 Kgs. of white powder in 10 packages. Further investigation led to the discovery of the following facts :- . Sriram Leather Exports is a non-existing company. All the accused entered into a conspiracy to export the Mandrax Tablets which is a psychotropic substance from India to South Africa. An earlier attempt was made during October, 1997 to illegally export the narcotic substances by concealing them in cotton bales, but due to the tight vigilancy the respondent, that cannot be accomplished and the psychotropic substances were kept in the godown of Dart Express. Later, all the accused entered into a conspiracy to export the Mandrax Tablets and white powder from India to South Africa hidden in leather jackets. The petitioners Vasana, Ganesan, Krishnakumar and Prasanna Kumar procured the leather jackets. The Mandrax Tablets were removed from the godown of Dart Express to the place of the petitioner P.T. Joseph to the knowledge of the other petitioners. The psychotropic substances were concealed in 10 packages containing leather jackets. 14 packages of leather jackets were transported by the petitioner Vasana to the Airport through a vehicle. The packages were unnumbered and when random check-up was taken up by the respondent, and they indicated package number to be brought before them, the accused took up unmarked consignments which did not contain the psychotropic substances and marked the numbers asked by the respondent and produced the same for inspection. A thorough check revealed the enclosures. The respondent conducted investigation and arrested the petitioner and others and after investigation, filed final report against the petitioners.

2. Now, the petitioners seek bail on the following grounds :- (i) the investigation was over and charge-sheet has been filed; (ii) co-accused Narasimhan was released on bail; (iii) the petitioners had no bad antecedent; (iv) the statements given by the petitioners do not disclose any incriminating circumstance against them; and (v) the white powder was not a psychotropic substance.

3. Heard both the sides. It is admitted that investigation is over and charge-sheet has been filed. The mere fact that the respondent has filed final report by itself would not cloth the petitioners with a right to seek bail. In fact the fact that the petitioners have been served with charge-sheet would indicate a prima facie case against the petitioners. In State v. Adi Rajaram 1996 2 LW Cri 482, his Lordship Shivappa, J. has observed as under :-

'Investigation is not an end in itself. It is process which precedes the trial. Evidence has to be collected, but the indictment comes only after the evidence is placed before the court, appreciated and accepted. If by proper safeguards the evidence collected during investigation is not allowed to be preserved and placed before the court and if in the intervening stage, through the operation of extraneous force the evidence is allowed to be undermined or erased, the entire investigation become an exercise of futility and the guilty escape the arms of justice. The possibility of the evidence being tampered is, therefore, serious aspect to which the Court has to give due consideration.'

Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 recites.as under :-

'37. Offences to be cognisable and non-bailable. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -(a) every offence punishable under this Act shall be cognisable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(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.

(2) The limitations on granting of bail specified in Clause (b) of Sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of

1974), or any other law for the time being in force on granting bail.'

Therefore, the initial presumption is that intention of the petitioners is culpable considering the huge quantity involved, the burden lies upon the petitioners to show that prima facie their guilt is not proved.

4. It is argued by the learned Counsel for the petitioners that co-accused Narasimhan who is one of the procurer of the Mandrax Tablets had been released on bail and an application filed before this Court for cancellation of the bail granted to Narasimhan has also been dismissed. According to them, they stand in a lesser pedestal than Narasimhan in that the case against them is that some of the accused procured the leather jackets and some of them packed the Mandrax Tablets in the leather jackets. The learned Counsel for petitioners submitted that there should be parity between one accused and the other and if the co-accused is released, the other accused should also be released. The learned Counsel for the petitioners referred to the decisions reported in *Nanha v. State of Uttar Pradesh - 1993 Cri.L.J. 8 (Ker.)*; *A.N. Dyaneswamn v. The Enforcement Officer, Enforcement Directorate etc. 1996 2 L.W. (Cri.) 569*.

5. In *Nanha v. State of U.P.* , it has been observed as under :-

'Judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all the judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi-judicial authorities have not only to serve the public but also to create confidence in the minds of the public.'

6. In *A.N. Dyaneswamn v. The Enforcement Officer, Enforcement Directorate etc. 1996 2 L.W. (Cri.) 569*, it has been held as follows :-

'Regarding the contention that a co-accused has been released and the petitioner is entitled for release on that ground, it is settled principle of law, whenever a co-accused similarly situated is granted bail the same benefit should be given to another accused. In essence, the co-accused must be similarly situated. The

reason which weighed with the Court while releasing a co-accused is a matter to be taken into consideration in considering the case of a co-accused. It is stated in the statement of objection that there is nexus between the petitioners and 'S'. The release of 'S' need not be a factor to be taken into consideration to consider the case of the petitioner.'

7. According to the petitioners, they were not aware that the tablets are psychotropic substance; that they were under the belief that the tablets were some pills meant to cure heart disease and they were vitality tablets. The case of the prosecution is that each petitioner has played for a specific role in committing the act and that the absconding accused and Narasimhan procured the Mandrax Tablets. One of the petitioners transported the psychotropic substance from the godown of Dart Express to the petitioner Joseph's house and from there Prasanna Kumar transported the consignment to the Airport and the other petitioners were actually witnessing the concealing of the tablets in leather jackets.,

17. In *Ajay Aggarwal v. Union of India* : 1993 CriLJ2516 , the Apex Court has pointed out that an offence of conspiracy is constituted of a number of ingredients. The Apex Court has observed as under :-

'An agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or a legal act by illegal means. Conspiracy is conceived as having three elements : (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy.'

8. The learned Government Advocate argued that the statements of the petitioners made under Section 67 of the N.D.P.S. Act contain certain facts which are to be accepted as admissions under Section 17 of the Evidence Act; that they become relevant under Section 27 of the Evidence Act and an admission of one person is binding on the other. The difference between 'admission' and 'confession' is that a 'confession' is an inculpatory statement made by one of the accused incriminating himself with the crime, and so far as 'admission' is concerned, it is not an inculpatory statement, but mere statement of facts. The Evidence Act is common to both Civil and Criminal Proceedings and how far the statements can be accepted as confession or admission have to be considered at the time of the trial. Suffice it to mention that the statement of the accused indicates a design to export Mandrax Tablets. The consignment is purported to have been sent by . Sriram Leather Private Limited. But according to the respondent, this is a fictitious entity. Further, if the concern has licence to export leather garments, the very fact that the tablets whether or not psychotropic substance being concealed in the garments to the knowledge of the petitioners itself would show that what is enclosed is not a thing permitted to be exported which in turn shows that the criminal mind. I am satisfied that it is not as if the prosecution has not established a prima facie case against the petitioners. In other words, it is not that the petitioners have made out a prima fade case that they are not guilty. The statements made by the petitioners under Section 67 of the N.D.P.S. Act show that each one is very much involved in the offence. What would be the evidentiary value of the statements will be seen at the time of the trial. On the basis of these statements, according to the respondent, prima fade a suspicion had arisen against the accused to frame charges against them.

9. It is nextly contended by the petitioners that the white powder which was found in possession, was not a psychotropic substance. It is evident that 382.043 Kgs. of Mandrax Tablets were found concealed in the consignment and that is a psychotropic substance.

10. It is argued that the petitioners have no bad antecedents. The fact, that they are not involved in any earlier offence may be a factor in considering whether or not bail could be granted to them, but that may not be the sole factor to grant bail.

In the decision reported in A.M. Dyaneswaran v. The Enforcement Officer, Enforcement Directorate, etc. 1996 2 L.W. (Cri.) 569, Shivappa, J. has observed as under :-

'...Court has to keep a balance between rights of investigating agency on the one hand and right of liberty to the accused on the other hand. It is always said 'better to light a candle than to curse darkness'. In the sense, with holding bail may likely to result in unearthing the truth. It is good to cherish and protect individual liberty but with limitation without affecting rule of law. When allegation is that offence touching the cry of liberty should not be of paramount consideration.'

11. In the result, all these petitions are dismissed.

These petitions having been posted this day for being mention in pursuance of the order of this court dated 1-2-1999 and made herein and in the presence of the above said Advocates, the Court made the following order.

This matter has come for being mentioned today.

12. The learned Counsel for the petitioner submits that the petitioners are languishing in the prison for the past 1 1/2 years and trial may be expedited. The learned Public Prosecutor submits that trial is to commence on 10-2-1999. Normally, the sessions trial go on day to day. Therefore, I feel the trial will be completed within a reasonable time. The learned Public Prosecutor submits that about 25 witnesses are to be examined on the side of the prosecution. The trial court to post the case day-to-day from 10-2-1999 and dispose of the same as expeditiously as possible.

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