

Manbhari Devi and Etc. Etc. Vs. State

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Court : Himachal Pradesh

Decided On : Jun-30-2000

Reported in : 2001CriLJ70

Judge : Kuldip Chand Sood, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Section 438; ;Narcotic Durgs and Psychotropic Substances Act, 1985 - Sections 2, 20, 27A, 29, 32, 37 and 37(1)

Appeal No. : Cri. M.P. (M) Nos. 610 to 622 of 2000

Appellant : Manbhari Devi and Etc. Etc.

Respondent : State

Advocate for Def. : R.M. Bisht, Asstt. Adv. General

Advocate for Pet/Ap. : Deepak Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Kuldip Chand Sood, J.

1. All these 13 applications under Section 438 of the Code of Criminal Procedure are being disposed of by this common order as all of them arise from a case FIR No. 257/2K for the offences punishable under Section 20/27-A/29/32 of the Narcotic Drugs & Psychotropic Substances Act, 1985, (hereinafter referred to as 'the Drugs Act') registered with the Police Station, Kullu, on 1-7-2000. The applicants are resident of Village Tosh, P.O. Barashiani, Tehsil and District Kullu (H.P.)

2. In order to appreciate the respective contentions of the applicants and prosecution, the facts as disclosed in the First Information Report may be noticed in brief:

On the early morning of 1st June, 2000, ASI Kanwar Singh, Incharge, Police Post Manikaran, received a secret information that Datti Ram S/o Alam Chand r/o village Tosh deals in the sale of Charas at large scale and on immediate raid Charas can be recovered from his house. ASI Kanwar Singh reduced the information received by him in writing, constituted a raiding party including therein local Vice-President of the Panchayat Khushal Chand and Numberdar Tej Ram. A copy of the information so recorded was sent to Dy. S.P. Head Quarter, who, at the relevant time was present at Manikaran itself. The raiding party reached in village Tosh included local inhabitant Chanderkant in the raiding party and went to the house of Datti Ram. His house was searched, in the presence of the witnesses, and 2 Kg. 150 grams of Charas was recovered. Formalities were completed. In the meanwhile, applicant Ludar Chand, his wife Manbhari and mother Kali Devi came to the house of Datti Ram and Manibhari stated snatching the sealed parcel of Charas, on which all the sealed parcels and other relevant papers were put in a bag. A camera was taken out so that photographs could be taken. In the meanwhile, several women and men of the village gathered in the verandah of the house of Datti Ram and wanted to snatch the bag. All of them wanted that case against Datti Ram should not be registered. The police officials including Dy. S.P. tried to pacify the crowd but without any success. All the women and men of the village gathered around the house of Datti Ram and the women in Verandah started snatching the bag. In this sensitive situation, the bag was handed over to Constable Darshan Singh, but three of the applicants, namely,

Mehari s/o Sindhu, Sher Singh s/o Sindhu and Duni Chand snatched the bag from the aforesaid Constable Darshan Singh and fled away along with bag, which contained Charas recovered from the house of Datti Ram. The First Information Report names the applicant Puran Chand, Desh Raj, Nath, Dehri Devi, Sita Devi, Kubja Devi, the persons who were gathered in the varandah. It is the further case of the police that all these persons made Datti Ram to flee away and have now screened him. It is in this background the applicants seek pre-arrest bail on the plea that the allegations made against them in the First Information Report are false and they have nothing to do with the alleged recovery of contraband from the house of Datti Ram. It is further case of the applicants that no case on the face of the First Information Report is made out under Sections 20/ 27-A/29 and 32 of the Drugs Act against the applicants, Mr. Deepak Gupta, learned counsel for the applicants submits that no case against any of the applicants under any provision of the Drugs Act is made out and at the most the applicants are liable to be proceeded against under the provisions of Indian Penal Code for having obstructed the police in discharge of its duties.

3. It may be noticed that grant of anticipatory bail under Section 438 of Code of Criminal Procedure is subject to Section 37 of the Drugs Act which provides that notwithstanding anything contained in the Code of Criminal Procedure, no person shall be released on bail unless the conditions as stipulated under Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 37 of the Drugs Act are satisfied. Section 37 as amended in the year 1989 reads as follows :-

37. Offences to be cognisable and nonbailable :-

(1) Notwithstanding, anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 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 oppose 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 of bail.

4. It may be noticed that the Court can only grant bail if it is satisfied that there exists reasonable ground for believing that the applicant is not guilty of offence under the Drugs Act, the punishment for Which extends to five years or more. It is now settled that Section 37 limits the scope of applicability of the provisions Of Code of Criminal Procedure regarding grant of bail and are subject to Limitations contained in Section 37 of the Drugs Act as amended in the year 1989 (see Narcotics Control Bureau v. Kishan Lal (1991) 1 JT (SC) 258 : (1991 Cri. LJ 654).

5. Section 27-A provides punishment for those who indulge in financing, directly or indirectly, any of the activities specified in Sub-clauses (i) to (v) of Clause (viii) of Section 2 or harbours any person engaged in any of the aforementioned activities.

6. Section 29 provides for punishment who abets or a party to the criminal conspiracy to commit, an offence punishable under Chapter IV of the Drugs Act.

7. Section 32 provides punishment for the contravention of such provision of Drugs Act or any rule or order made, or any condition of any licence, permit or authorisation issued thereunder for which no punishment is separately provided.

8. Learned Counsel for the applicants strenuously urges that even if the allegations made in the First Information Report are assumed to be correct no case against any of the applicants is made out so far offences punishable under Sections 29 and 32 of the Drugs Act are concerned. He submits that so far Section 27-A of the Act is concerned, there is nothing in the First Information Report to show that any of the applicants has supplied clothing, means of conveyance,

money or assistance to evade apprehension by the police. Mr. Deepak Gupta, learned counsel for the applicants contends that only applicants Ludar Chand, his wife Manbhari and mother Kali Devi who tried to snatch the bags from the police and other three applicants, namely, Mehari, Sher Singh and Duni Chand who snatched the bag, are named in the FIR. There is no allegation so far the other applicants are concerned.

9. Mr. Ram Murti Bisht, learned Assistant Advocate-General, on the other hand submits that the case is at the initial stage of its investigation and role of each of accused is yet to be determined after interrogation. He submits that the Court taking into consideration the serious nature of the offence may not go into the merits of the allegations made against the applicants.

10. The provisions for grant of anticipatory bail under Section 438 of Code of Criminal Procedure are not to be mechanically applied. Nature and gravity of the circumstances in which the offence is committed; the position and status of accused with reference to victim and witnesses; the likelihood of accused fleeing from justice; possibility of accused tampering with the witnesses and larger interest of the public, investigation and the State are some of the considerations which must weigh with the Court while deciding the application for grant of anticipatory bail. Liberty of a citizen indeed is of paramount importance but at the same time fair and fearless investigation of a case of serious nature is of no less importance. The Court shall refrain from exercising its discretion in favour of an accused under Section 438, Cr.P.C. if it adversely affects the investigation and larger public interest.

11. Taking into consideration the entirety of circumstances and the fact that the main accused Datti Ram fled away due to interference, if not active assistance of the persons including the applicants who were present at the spot, in the progress of investigation, I am of the view that this is not a fit case where discretion under Section 438 of the Code of Criminal Procedure should be exercised in favour of the applicants-petitioners. Accordingly, all the applications are rejected.

12. Any observation made hereinabove shall not be an impediment in the way of the applicants-petitioners to apply for a regular bail before the competent Court.

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