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Mohd. Abdullah Hafiz Vs. State

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Court : Jammu and Kashmir

Decided On : Nov-28-2003

Reported in : 2004(2)JKJ551

Judge : Syed Bashir-Ud-Din, J.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 37

Appeal No. : Cr. Rev. 16/2003

Appellant : Mohd. Abdullah Hafiz

Respondent : State

Advocate for Def. : Jehangir Iqbal, GA

Advocate for Pet/Ap. : G.A. Lone, Adv.

Judgement :

Syed Bashir-Ud-Din, J.

1. Police party headed by Dy.S.P. of P/S Awantipora intercepted goods vehicle with the registration mark and No. JK02-6747 on National High Way within jurisdiction of the Police Station and recovered 14 bags 'phokey' (husk powder) from the vehicle. Driver of the vehicle Bashir Ahmed Bhat, conductor Mohd. Maqbool Bhat and one Abdul Majid Makroo who were in the vehicle were arrested

and contraband goods seized. Case was registered as FIR No. 105/2003 Under Section 18/20 NDPSA (hereafter called Act) and 3/18 M.V. Act read with Section 34 and 207 RFC. Subsequently the owner of truck applicant Mohd. Abdullah Hafiz was also taken in custody. Said applicant Mohd. Abdullah moved an application for bail. The application was dismissed by the Ld.District & Session Judge, Pulwama by his order dated: 11.9.2003. Against this order present revision is filed.

2. Public Prosecutor despite repeated opportunities has failed to file objections. Challan has been produced in court against the accused.

3. Heard the counsel and perused the record. The trial court of District & Session Judge, Pulwama has rejected the bail application on the ground that at the stage of proceedings in the main matter as grounds do exit to believe that prima-facie case is made out against the accused, he cannot be admitted to bail in view of the restriction by Section 37 of NDPSA.

4. The core issue determantive of whether accused is to be admitted to bail or not, is the satisfaction of court whether there are reasonable grounds for believing that the accused is or not guilty of offence under the Act. This necessarily implies going through statement of witnesses, Case put-forth by the prosecution. Contraband seized and other aspects of the case having bearing on the question.

5. Admittedly when the 'phoky' was seized from the truck, applicant-accused was not present on spot. Only the driver, conductor, and one Ab. Majid Makroo were boarding the truck. When it was intercepted and phoky recovered. Applicant was not on the scene at that stage. The statements recorded by the Investigating agency and other material collected show that the applicant owner of the goods vehicle/truck had given it for hire and reward to accused Ab. Majid Makroo. It is Abdul Majid Makroo who conducted repairs of this vehicle and made it roadworthy. The camaflouge box in which the contraband was concealed is not stated or shown to be fabricated or at least within the knowledge of the application. As per prosecution case the 'Phoky' has been loaded and stocked in the camaflouged Box by one Mohd. Maqbool Bhat at the business site of one Gh. Rasool Wani. This Mohd. Maqbool Bhat and Gh. Rasool Wani, though shown as accused in the challan, have not been at all arrested. Investigating agency has not been able to

trace either of the two. Nothing incriminating and inculpating is against applicant Mohd. Abdullah Hafiz. Merely because he happens to be the owner of the truck or in whose name the truck is registered, it cannot be said, may be even prima-facie that he has knowledge as to the use to which the truck is put morso when investigating agency has not attempted to investigate or at least bring on record as to the time lag between the giving of truck on hire and reward to the accused and the date of occurrence.

6. In the final report (challan) produced before the court of District & Session Judge, Pulwama applicant is roped only because he is stated to be the owner of the vehicle, though in the final report it is investigating officer who has stated that no papers to show that the vehicle belongs to the applicant Mohd. Abdullah Hafiz, were produced before investigating agency and the agency has not made any attempt to check the records from the Motor Vehicle Department of the State Govt. to find in whose name the vehicle is registered and who has actually obtained its route permit, fitness certificate and other documents of the vehicle.

7. The cases cited at bar Babua alias Tazmul Hussain v. State of Orissa, (AIR 2001 SC 1052) and Intelligence Officer, Narcotics C. Bureau V. Sambhu Sonkar and Anr., in terms are not applicable to the facts and circumstances of this case. While State of M.P. v. Kajad, (2001)7 SCC 673 enshrines that bail can be granted only under exceptional circumstances as incorporated Under Section 37 of the NDPS Act, 1985, it is not an authority to lay that in no case bail can be granted to an accused under the Act, even if the court is satisfied that there are reasonable grounds for beleiving that the accused is not guilty of the offence. Union Of India v. Ikram Khan, (AIR 2000 SC 3397), Provides that while dealing with bail application of an accused under NDPSA, the court has to bear in mind provisions of Section 37 of the NDPS Act.

8. In the above circumstances it cannot be said that even prima-facie the trial court of District & Session Judge, Pulwama had reasonable ground to believe that the accused is guilt of offence under the Act. In the totality of facts and circumstances applicant Mohd. Abdullah Hafiz qualifies to be admitted on bail on the criteria that the court is satisfied, that there are reasonable grounds to believe that he is not

guilty of the offence of which he is charged and that there is no likelihood of his committing any offence while on bail.

9. In the above view of the matter accused is admitted to bail in the sum of Rs. 10,000/- with personal recognized bond in the like amount on conditions that the accused shall appear before court and take orders from District & Session Pulwama in the case regarding appearance on adjourned dates and that he would refrain from pursuading or coercing or bearing undue influence on witnesses who are likely to appear against the accused. It is made clear that the trial court of District & Session Judge shall be free to cancel the bail in the event if during course of trial events are unfolded and evidence comes on record to show that the accused is prima-facie guilty of commission of offence under the Act.

10. The bonds to be executed, verified and attested by and to the satisfaction of the Registrar Judicial, Srinagar. The bonds alongwith copy of this order be send to court below. Disposed of.

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