

(1996) 12 RAJ CK 0017

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 2988 of 1996

Ashwani Kumar Bhardwaj

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 439

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 3, 37, 8

National Security Act, 1980 — Section 3

Citation : (1997) CriLJ 1365

Hon'ble Judges : A.S. Godara, J

Bench : Single Bench

Advocate : H.D. Purohit, Anand Purohit, R.K. Charan and Pradeep Shah, for the Appellant; K.L. Jashmatia, A.A.G. and S.K. Vyas, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.S. Godara, J.—This bail petition has been filed u/s 439, Cr.P.C. by the accused-petitioner in F.I.R. No. 228/96. P.S. Chanderia, District Chittorgarh, after similar application was dismissed by the learned Addl. District and Sessions Judge No. 1. Chittorgarh in Criminal Disc. Petition No. 563/96 vide its order dated 6-12-1996.

2. Briefly stated, the prosecution case against the present petitioner as well as his co-accused Mukesh Kumar Sharma who is, presently absconding evading his arrest right from the beginning, is that Bhanwar Singh, S.H.O. of P.S. Chanderia received an information on 10-6-1996 that Mukesh Kumar was running a Mill wherein poppy-husk was being powdered. Bhanwar Singh, accompanied by his subordinate officials as well as two motbir witnesses Nanda and Ram Singh, raided the premises situated in the village Bojunda, on the Chittorgarh-Udaipur highway road and they found that a room was being used as a Mill for preparation of the powder by milling the poppy-husk illegally in the premises that was situated just behind the warehouse godown, found to have been taken on

rent by Mukesh Kumar in his own name and, in fact, the same having been taken for and on behalf of the present petitioner, powder of poppy-husk weighing 500 gms. was taken out from the machine of the Mill and, after due formalities, two packets of samples each weighing 100 gms. and the remaining lot of the contraband, were packed and sealed in three separate packets by the raiding party. All the persons incharge of the premises of the warehouse godown as well as adjacent to rooms whereat the Mill was so found, made good their escape. The Mill (machine) was also seized. Lastly, on the basis of the report of Bhanwar Singh, F.I.R. NO. 228-96 u/s 8/15 of the Narcotic Drugs and Psychotropic Substances Act, (for short "the Act") was registered and investigation was taken up by the Dy. S.P.

3. The present petitioner was already arrested on 7-6-1996 in another case and he was continuing in custody had, during the course of investigation, his formal arrest was also made in this case as well. As regards Mukesh Kumar, he could not be arrested and is still absconding.

4. The petitioner moved similar bail petition u/s 439, Cr.P.C. before the Lower Court and the same, as above, was lastly, rejected on 6-12-1996 and hence this petition.

5. I have heard the learned counsel for the petitioner as well as the learned Addl. Advocate General and have also been taken through the statements of Ratan Lal, Pane Singh and Nawal Ram, recorded under Sections 161 and 164, Cr.P.C, besides the statements of Shakti Singh, Ashok Chandak, Dilip Kumar, Rajendra Kumar Pareekh, Harnath Singh (Both Excise Officers), Shyam Lal, Devi Ram, Kishna, Bhanwar Lal as well as Manoj Kumar, Dhoola Ram, Mubarik and Shiv Singh, Bhanwar Singh S.H.O. of P. S. Chanderia, along with his associates, besides, Nanda and Ram Singh motbir witnesses, who raided the premises wherein the alleged powdered opium poppy weighing 500 gms. was recovered from the grinding mill (Machine), are the witnesses of the alleged search and seizure.

6. The learned counsel for the petitioner vehemently argued that since Shri Shrinivash Janga Rao, S.P. Chittorgarh because of some trifling incident, got annoyed and enraged and, consequently, he along with his subordinate police officials, is bent upon wrecking vengeance on the petitioner and as a result, he has been falsely booked in as many as 16 cases besides under the National Security Act as well and the order passed u/s 3 of the Act at the initiative of S.P., was quashed by the High Court and has also been affirmed by the Hon'ble Supreme Court and so the S.P., Chittorgarh and his subordinates have made it a prestige point thereby not allowing the petitioner to be bailed out in all the cases, so pending against him.

7. It is also contended that, as is evident from the statements of Mukesh Kumar and Dhoola Ram Sindhi, the warehouse godown, being a licensed one by the Excise Authorities, rented is out to Mukesh Kumar. Although, there is a written

rent note in proof of the documentary evidence creating tenancy between Mukesh Kumar and Manoj Kumar but, and how, against the documentary evidence verbal evidence in the form of statements u/s 161 Cr.P.C. has been collected whereby Ratan Lal, Nawal Ram, Pane Singh, Shyam Lal, Devi Lal, Kishna, Bhanwar Lal etc. have deposed that Manohar Lal was operating his business of collection and storage, transport etc. of the poppy-husk in the warehouse godown as an agent and representative of the petitioner and, therefore, it is further contended that, assuming that the warehouse godown, the same being licensed one, stood a licensed, declared and authorised place of storage of the poppy-husk collected through the agency of agents, is also borne out of the statement's of the aforesaid witnesses, from the local area thereby prescribed by the said Excise Authorities. Therefore, the petitioner, even if it is assumed, that he took contract of collection, storage and disposal of the poppy-husk as per the terms and conditions of the licence so granted in the name of Mukesh Kumar, that by itself does not make the petitioner liable for commission of any offence u/s 8 being punishable u/s 15 of the Act.

8. This is also not shown that the accused-petitioner himself, in contravention of any provision of the said Act or any rule or order made or condition of licence so granted thereunder, either produced, possessed, transported or imported any poppy-straw or poppy-husk. Therefore, it is further contended that all the aforesaid witnesses, who are under the influence of the police and, specially having regard to the statements of Shakti Singh Ashok Chandak, Dilip Kumar, Harnath Singh and Rajendra Kumar Etc., whose complicity in the alleged offence cannot be ruled out, they have been named and brought forward as false witnesses to link the accused-petitioner through the agency of Mukesh Kumar who has not been apprehended by the police so far and, even after careful perusal of their statements, specially as borne out of statements of Ratan Lal Nawal Ram and Pane Singh examined u/s 164, Cr.P.C., they have not been able to depose that it was the petitioner who managed and financed the affairs of the warehouse godown so licensed in the name of Mukesh Kumar. Besides, though, Ratan Lal Nawal Ram, Pane Singh etc. have further stated that the poppy-husk stored and collected in the adjoining warehouse godown was once used for milling and preparation of the poppy-husk powder with their service but, before the second venture can be accomplished, the rooms were raised and they were alerted to have escaped from there by Mukesh Kumar. Admittedly, the petitioner was arrested and is in custody since 7-6-1996. Though, besides aforesaid witnesses Mubarik and Shiv Singh have also deposed the poppy-husk powder was so milled and manufactured in the aforesaid two rooms, not forming part of the rented out warehouse godown building and that the petitioner used to often frequent to above places and that the whole affairs were being managed and earned out under the direct supervision and control of the petitioner but, none of the witnesses could point out a single date or day when the petitioner was present either at the warehouse godown or at the site from where the milling machine used for preparation of the powder was recovered. As is evidenced from

the seizure memo, the machine was also not operational since the motor was not there and that starter was also not available. The alleged powder prepared from the poppy-husk, as above, has not been traced out and it is also not shown as to where the same had gone. Had there been a regular processing of the milling and preparation and consequential "manufacturing of the powder as is the prosecution case, a recently prepared powder weighing only 500 gms. could not have been left there, Therefore, it has been further argued that there is no other evidence to prima facie believe that the present petitioner had committed contravention of any of the three clauses of Section 8 of the Act and, therefore the petitioner could not be held liable for commission of alleged offence u/s 15 of the Act.

9. Besides, lastly, it has also been urged that looking to the nature and background of the case, there are strong circumstances for release of the petitioner on bail since the possibility of his ultimate acquittal cannot be ruled out.

10. The learned Addl. Advocate General, in an attempt to repel all the arguments of the learned counsel for the petitioner, has contended that the Court should keep in view all facts and circumstances including the antecedents of the accused-petitioner and his involvement in the nefarious activities of illegally trafficking in narcotic drugs and psychotropic substances and, since he is still involved in many more serious cases and modus operandi used by him is that he has been, with the connivance of the State/ Central Excise Authorities etc., procuring licences for dealing in such excisable articles through his subordinates and other associates and, similarly, he has managed to obtain a licence for getting the aforesaid warehouse godown which was functioning, as are the statements of number of witnesses. The whole business was being run through the agency of Mukhesh Kumar for and on behalf of the petitioner. They were admittedly custodian of the rented warehouse godown. Besides, the adjoining two rooms, as are the statements of Mukesh Kumar and Dhoola Ram, were let out verbally to the petitioner whereat he was milling and manufacturing the powder from poppy-husk removed from the premises of the said warehouse godown and as is also borne out of the circular dated 28-2-1996 issued by the Excise Commissioner, Rajasthan, Udaipur, thereby calling upon the subordinate Excise Officers to see that poppy-husk and not the same, was filled in the gunny-bags and that the weightment of each bag ought not to exceed 40 kgs. Therefore, lastly, the learned Addl. Advocate General has further contended that, even if it is assumed that the petitioner along with Mukesh Kumar being controller and operator of the warehouse godown and the same being licensed one, were not authorised to have milled the poppy-husk and capsules thereof thereby converting them into the powder and that it was in clear contravention of the terms of the licence and the powder so prepared was, apparently, illegally transported and disposed of and, therefore, manufacturing, possession and disposal, after transportation of the powder so prepared, was per se in contravention of the said legal provisions. In proof thereof, since 500 gms. of powder was recovered from the deserted premises whereat the milling machine

was also found and recovered along with the contraband powder and, therefore, presently, having regard to the mandatory provisions of Section 37 of the Act, the Court cannot prematurely conclude that the petitioner did not commit any offence so as to extend him benefit of being released on bail, as prayed for.

11. On careful consideration of the verbal and documentary evidence resulting from a thorough investigation, suffice it to say that, at this stage, there is ample evidence to believe that the accused-petitioner Mr. Bhardwaj was deeply, involved in legal/illegal activities in respect of the various excisable contraband articles as well. His co-accused Mukesh Kumar is hardly a man of means. Mr. Bhardwaj, in connivance with the State and the Central agencies, was manipulating, manoeuvring and obtaining contracts of collection, storage, transportation etc. of opium poppy etc. in the names of different associates/partners/accomplice. As a result, he also appears to have managed to get the contract of Chittorgarh circle for the collection, storage, transportation etc, of the opium poppy in the name of Mukesh Kumar Sharma of Nasirabad and the latter was over all, incharge of the warehouse godown raised by Bhanwar Singh, as above. Naturally, as is also evident from the investigation, the present petitioner too occasionally visited and checked the business so being carried on at the said warehouse godown and his interest, involvement and control as such is, at present, even on the fact of multi-facet challenging arguments from the side of the petitioner, is not without supporting proof.

12. However, accepting that the warehouse godown was jointly or, even if so assumed, by way of a benami or fictitious transaction, taken on rent by the petitioner in the name of his trusted-associate, Mukesh Kumar and they were controlling the activities connected with the same, the prosecution, after investigation, has filed Charge-sheet u/s 8/15, of the Act, against the present petitioner on the ground that he manufactured the opium poppy powder, possessed the same and sold/transported the same illegally thereby contravening the provisions of clause (c) of Section 8 of the Act being punishable u/s 15 of the Act.

13. Therefore, presently, there being no charge-sheet for any contravention in respect of obtaining licence for the purposes of collection and warehousing the poppy husk in the warehouse godown itself, merely the petitioner's right or interest therein is not an offence by itself.

14. However, Bhanwar Singh and his associates-subordinates, besides Nanda and Ram Singh found 500 gms of poppy husk powdered, as remanent, lying in the mill (machine) itself. On the basis of statements of Nawal Ram, Ratan Lal and Pane Singh, the petitioner did not ask them to operate the grinding mill (machine) to prepare powder and it was Mukeshkumar who had asked them to do so. Whether Mukesh Kumar did get the alleged powder prepared at the instance and to the knowledge of the petitioner or that the powder, if any, was removed and disposed of, by the petitioner, is also not borne out of investigation. The persons purchasing, loading, unloading, transporting the same are not

known. How much powder was prepared, is also not known.

15. The petitioner was already in jail when the premises are raided. Mukesh Kumar was managing the affairs himself. Whether Mukesh Kumar conducted such activities at the instance and under the authority and knowledge of the petitioner for the benefit of the latter is also not clear.

16. Consequently, on taking an over all view of the evidence so collected, at present, the contention of the learned counsel is that the possibility cannot be totally ruled out that the petitioner was not a privy to the commission of the offence charged with and, that being so, keeping in view the aforesaid background, there are sufficient grounds to bail out the accused petitioner. As a corollary thereof, this contention cannot be rejected out right that he is not guilty of commission of offence charged with.

17. In the result, in special circumstances, without any precedent, this petition deserves to be accepted.

18. It is ordered that the accused-petitioner shall be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- and two surety bonds in the sums of Rs. 50,000/- each to the satisfaction of the trial Court, with full proof of their solvency. The petitioner shall further undertake not to indulge into any illegal activity in contravention of the N.D.P.S. Act and Rules framed thereunder while on bail, He shall also not tamper with or threaten or influence any prosecution during the trial. In case he fails to observe these conditions, the learned trial judge shall be at liberty to cancel his bail and take him into custody, without reference to this Court.