

(2007) 09 CAL CK 0058
In the Calcutta High Court
Case No : C.R.M. No. 7161 of 2007

Assistant Director, Narcotic Control Bureau, Eastern Zonal Unit	APPELLANT
Vs	
Md. Safikul Islam	RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 37, 37(1)

Citation : (2008) 2 CHN 1022

Hon'ble Judges : Sankar Prasad Mitra, J; Amit Talukdar, J

Bench : Division Bench

Advocate : T.K. Mukhopadhyay, for the Appellant; Joymalya Bagchi and Shiladitya Banerjee, for the Respondent

Judgement

1. In this application the bail granted by the learned Judge (Special Court) in NDPS Case No. 30/06 by his order No. 5 dated 17.10.2006 has been sought to be cancelled.
2. Shri Mukherjee, learned Counsel appearing for the Union of India has placed the order before us and submitted that the offence against the accused was u/s 18(c) of the NDPS Act.
3. According to Shri Mukherjee the punishment for violating the said provision was rigorous imprisonment for ten years with fine which may extend to one lakh rupees. Accordingly, the statutory period was ninety days and not sixty days as have been found by the learned Judge (Special Court), Murshidabad.
4. Shri Mukherjee for the Union of India has also submitted that the offence alleged against the petitioner related to possession of 1.700 kgs. of opium and recovery of Rs. 27,000/- as the amount of sale proceeds. In such view of the matter the quantity recovered from the accused was above small quantity but below commercial quantity.
5. The grounds, according to Shri Mukherjee which weighed with the learned Judge (Special Court) for the reason to release the accused on bail was not

acceptable and he has prayed for setting aside the order which has been impugned in this application.

6. Shri Bagchi, learned Counsel for the accused in his usual forensic skill has submitted that the offence did not fail within the bar of Section 37(1)(b) and as such even if the bail was improperly granted, the same should not be interfered with as it cannot be said it is an illegal order.

7. Shri Bagchi has prayed for maintaining the said order on the ground that the accused has already enjoyed his liberty for such a long time and at this stage this Court should not interfere in this application and should dismiss the same.

8. We have carefully heard the submission of Shri Mukherjee for the Union of India and Shri Bagchi for the accused. Shri Bagchi is quite correct that since the amount involved was below the commercial quantity, the rigors of Section 37 would not apply in this case. That way there cannot be any dispute and as also rightly shown by Shri Bagchi, the order passed by the learned Judge (Special Court) cannot be said to be an illegal order to that extent.

9. However, notwithstanding the said position we do not see eye to eye with regard to the finding of the learned Judge (Special Court) that "Investigation has proceeded lot" and apart from any other aspect of the matter could have thought of enlarging the accused on bail in spite of the backdrop of the offence alleged against him in view of the materials we find before us which has been produced on behalf of the Union of India.

10. It appears that in the meantime the petition of complaint has already been filed before the learned Trial Court on 27.11.2006 on behalf of the Union of India. The accused was arrested only on 30.8.2006 and on 17.10.2006 the stage when he was granted bail by the learned Trial Court, in our view, was absolutely in appropriate.

11. Considering the entire situation, we are of the opinion that the order passed by the learned Trial Court cannot be sustained and we, accordingly direct that the same be set aside.

12. The bail bond stands cancelled.

13. The petitioner would positively surrender to his bond and the learned Trial Court will proceed with the trial in accordance with law without being guided by the disposal of this application or any observation made therein. Application accordingly disposed of.