

(1990) 09 MAD CK 0045

In the Madras High Court

Case No : Criminal Miscellaneous P. No. 12285 of 1990

Asstt. Collector of Central Excise, Customs, Tiruchirapalli

APPELLANT

Vs

Paul M.A. Anthony

RESPONDENT

Date of Decision : 20-09-1990

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37
Official Secrets Act, 1923 — Section 3, 5

Citation : (1992) CriLJ 3150

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : Mr. P. Rajamanickam, Central Govt. Public Prosecutor, for the Appellant; Mr. K.J. Ayyappan, for the Respondent

Judgement

1. Paul M. A. Anthony, a Srilanka National, the respondent herein on 5-6-1990 at about 7-45 a.m. presented his baggage for Customs export

examination at the Trichy airport for boarding Air Lanka Flight UL 132 bound for Colombo. Since his behaviour was not normal, the Counter

Officer had reason to believe that he had concealed some contraband in his baggage. On being interrogated whether he had any contraband in his

person or baggage, he replied in the negative. Thereupon, the Counter Officer examined his baggage in the presence of two independent witnesses

and among other things, it was found to contain three eversilver lamps (Kuthuvilakku). As the lamps appeared to weigh more than what they

should normally be, the Officer examined them in detail and found brown colour powder kept concealed in the three lamps, each weighing 75 gms,

75 gms and 71 gms, and a stinking smell emanated from the powder. When questioned, he is stated to have admitted that they were narcotic

substances and gave a voluntary statement revealing certain startling factors. He would candidly admit about his possession of narcotic substance

and state that he made preparation for exporting it out of the country. He further stated that the said lamps containing contraband were given to him

by one Smt. Maheswari wife of Azhagiaperumal, residing at No. 24-A/17, Bharathiyar Street, John Thope, Trichy-2 wherein he was residing

before his starting for Colombo. He was apprehended on the same day and remanded to judicial custody. He then filed CrI. I.P. No. 2240 of

1990 on the file of the Sessions Court, Trichy for grant of bail. The learned II Additional Sessions Judge, on a consideration of the materials

available on record, granted bail on 8-8-90 on the sole and lone ground of the respondent having been detained in prison for more than a month

after his arrest. The Assistant Collector of Central Excise, Customs Airport, Trichy, the petitioner herein, has moved the present petition for

cancellation of bail so granted. It is to be noted that though no stay of the operation of the order of the learned II Addl. Sessions Judge, had been

granted by this Court, since the respondent could not produce the requisite sureties as ordered, he is still languishing in prison.

2. Mr. P. Rajamanickam, learned counsel for the Customs Department/petitioner, would strenuously contend that the order of the learned Sessions

Judge releasing the respondent on bail on the facts and circumstances of the case is a sad reflection of the exercise of Judicial discretion, that the

primordial requisites which should be considered for the grant or refusal of bail had not been duly considered whilst granting bail, that, top of all, a

bare perusal of the order would bring to the surface that the learned Sessions Judge was rather oblivious of the salient features adumbrated under

S. 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 pertaining to grant of bail to persons accused of offences under the said Act,

and that, therefore, it is that the order of the Sessions Judge deserves to be set aside and the bail granted to the respondent has to be cancelled.

3. Mr. K. J. Ayyappan, learned counsel appearing for the respondent on behalf of the State Legal Air Board, would be course vehemently attempt

to repel the submissions of the learned counsel for the petitioner, by contending that the discretion exercised by the learned Sessions Judge to grant

bail to the respondent is a proper exercise of discretion and cannot at all be interfered with, especially when the considerations that loom large for

cancellation of bail are distinctly different from the factors which weighed while granting bail.

4. I have carefully considered the rival submissions of the respective counsel. There are certain precedents in the shape of judicial pronouncements

of the apex of the judicial administration of the country in the matter of grant, refusal or cancellation of bail, which if considered would furnish very valuable guidelines for arriving at a just decision in this case.

5. In the *The State Vs. Captain Jagjit Singh*, , the respondent was a former Captain of the Indian Army and was charged under sections 3 and 5 of

the Official Secrets Act for conspiracy and passing on official secrets to a foreign agency. The Sessions Court refused bail but the High Court

granted bail stating that his case might fall only under S. 5 which was bailable and not S. 3 which was not bailable. On appeal by the State, the

Supreme Court held (at page 216 (of Cri LJ) :

"..... the High Court should have proceeded to deal with the application for bail on the assumption that the offence was under S. 3 and

therefore not bailable. It should have then taken into account the various considerations such as, nature and seriousness of the offence, the

character of the evidence, circumstances peculiar to the accused, possibility of his absconding, tampering with witnesses, larger interests of the

public and the State and similar other considerations which arise when bail is asked for in a non-bailable offence.

The fact that the applicant for bail might not abscond was not by itself a sufficient ground for granting bail."

In *Bhagirathsinh Judeja Vs. State of Gujarat*, though on facts the Supreme Court refused to interfere with the discretion exercised by the Court

below in granting bail to the accused, yet, it made certain observations which are very relevant and they are as follows (at page 161 (of Cri LJ) :

"Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. It is now well-settled by a catena of

decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only

material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the

discretion granted in his favour by tampering with evidence. If there is no prima

facie case there is no question of considering other circumstances.

But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way

of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his

favour by tampering with evidence."

In *Rajnikant Jivanlal and Another Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi*, the Supreme Court held as under :

"The accused cannot, therefore, claim any special right to remain on bail. If the investigation reveals that the accused has committed a serious

offence and charge-sheet is filed, the bail granted under proviso (a) to S. 167(2) could be cancelled.

In the present case the offences alleged are of serious nature. Therefore, the discretion exercised by the High Court does not call for any

interference."

In *State of Maharashtra Vs. Anand Chintaman Dighe*, the Supreme Court held (at page 789 of Cri LJ) :

"..... Court would not ordinarily interfere with the discretion of the lower court in granting or refusing bail but in case where bail has been granted

on irrelevant considerations, such as the status of influence of the person accused and regardless of the nature of the accusation and relevancy of

materials on record, Court would not hesitate to interfere for the ends of justice. Each case has to be considered on its own merits. The matter

always calls for judicious exercise of discretion by the Court. Where the offence is of serious nature of the Court has to decide the question of

grant of bail in the light of such considerations as the nature and seriousness of offence, character of the accused, a reasonable possibility of

presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the

public or such similar other considerations."

6. In the backdrop of the principles evolved by the Supreme Court in enunciating the law as respects the grant, refusal and cancellation of bail, let

me now dwell deep into the facts of the case and consider whether the order passed by the II Additional Sessions Judge, Trichy, in granting bail

to the respondent is justifiable. There is no manner of doubt whatever that when

the respondent was about to embark upon an Air Lanka flight, his baggage was found to contain three lamps in which brown sugar (heroin) was kept concealed. He is also stated to have given a voluntary statement admitting such possession, and handing over of the same to him by Smt. Maheswari for being transported to Sri Lanka. As such, there are plethora of prima facie materials as to his clandestine possession and his abortive bid to transport the contraband to Sri Lanka. The further signal circumstance to be taken note of is that he is Sri Lanka National and if let out on bail, the plausibility of making himself scarce before Court thereby protracting the proceedings, cannot be ruled out. After all Sri Lanka is so near and it is easily possible for a person like the respondent to go there by illicit transport by resorting to travel by a catamaran, which feat could be achieved with ease and grace and without any difficulty whatever. Moreover because of the severity of the punishment for the offence, viz., imprisonment for ten years and a fine of Rs. 1 lakh, there is every likelihood that the respondent may flee from justice by jumping bail. Taking into account the gravity and serious nature of the offence, the offenders under the Act are to be dealt with specially in the manner of grant of bail and provision had been made under S. 37 of the Act which reads as follows :

"37. Offences to be cognizable 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 cognizable;

(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 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-sec. (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 the force on granting of bail."

From a cursory perusal of the section extracted as above, it is patently clear that the grant of bail to a person accused of offences under this Act is circumscribed by the existence of certain pre-requisite conditions which alone will give power to the Court to grant bail. Apart from giving notice to the Public Prosecutor, if there are materials pointing out that there are reasonable grounds for believing that the person accused of the offence under the Act punishable with five years or more, is not guilty of such offence and that he is not likely to commit any offence while on bail, then alone such a person can be ordered to be released on bail. As adverted to earlier, the materials collected do prima facie indicate that the respondent is guilty of an offence punishable with ten years of imprisonment and a fine of Rs. 1 lakh. The further question that he is not likely to commit any offence while on bail, is a matter deserving to be decided in the backdrop of the special device adopted by the respondent for smuggling the contra band out of the country. Judicial notice can also be taken note of the fact that the contraband sought to be smuggled out of the country would fetch ten times the value in India, thereby making the person involved in such clandestine operation get a sizeable income. In such state of affairs, it is not far wrong to conclude that the respondent, if released on bail, is likely to commit such offence in future. Pertinent it is to point out that the learned Sessions Judge, while considering the grant of bail to the respondent, had neither taken into account the stringent provision of S. 37 of the Act, nor the prima facie materials pointing out the involvement of the respondent in such a serious offence, causing incalculable harm to the society at large. The fact that he had considered for granting bail viz. that the respondent is in detention for more than one month since his arrest is altogether an irrelevant consideration for grant of bail. The learned Judge had also failed to take note of the character of the accused, the serious nature of the offence. the reasonable possibility of the presence of the accused not being secured for trial, etc., and in these circumstances as rightly contended by Mr. P. Rajamanickam, learned counsel for the petitioner, it is not far wrong to say that the order passed by the learned II Additional Sessions Judge is a sad reflection of the improper exercise of judicial discretion vested in him. In view of what has been stated above, the order of the II Addl. Sessions Judge in CrI. M.P. No. 2240/90 dt. 8-8-1990, deserves to be set aside and accordingly

bail granted therein shall stand cancelled. Petition is allowed and the respondent, if out on bail, is directed to be secured forthwith and put in judicial custody.

7. Petition allowed.