
(1995) 12 MP CK 0002
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 3079 of 1995

Babulal and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37, 41, 42, 42(1), 42(3)

Citation : (1996) CriLJ 1864 : (1996) 1 MPJR 171

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : A.H. Khan, A.J. Bhojwani, for the Appellant;

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Considered the case diary.

Shri Bhojwani argued that in the present matter there is no compliance of provisions of Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as NDPS Act), because in the present raid, the raiding party had taken a gazetted officer - Mr. Negi who happens to be officer of the same department. It is his argument that taking such officer with the raiding party and thereafter saying that the accused were searched before a gazetted officer will not be in any way the compliance of Section 50 of Narcotic Drugs and Psychotropic Substances Act. He placed reliance on the judgment of Orissa High Court in this context in the matter of Bijaya Kumar Subidhi v. State of Orissa, reported in (1995) 2 Crimes 724. He argued that in view of non-compliance of provisions of Section 50 of Narcotic Drugs and Psychotropic Substances Act, the applicants accused would be acquitted and, therefore, accused need to be released on bail in view of Section 37 of Narcotic Drugs and Psychotropic Substances Act. He further pointed that there has been no compliance of Section

57 of Narcotic Drugs and Psychotropic Substances Act.

Shri A.H. Khan, counsel for C.B.N. Neemuch pointed by referring to the case diary that there has been due compliance of provisions of Section 57 of Narcotic Drugs and Psychotropic Substances Act. He submitted that the applicants were searched before a gazetted officer, and therefore, there has been compliance of provisions of Section 50 of Narcotic Drugs and Psychotropic Substances Act.

Section 50 of Narcotic Drugs and Psychotropic Substances Act reads:-

"Conditions under which search of persons shall be conducted-(1)Then any officer duly authorised u/s 42 is about to search any person under the provisions of Section 41, and Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in Sub-section (1), (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made, (4) No female shall be searched by anyone excepting a female."

The words "take such person" used in Sub-section (1) are very important. So also words "the Gazetted Officer or Magistrate before whom any such person is brought" used in Sub-section (3) are important. The words "take and brought" used invariably indicate that the person apprehended by raiding party has to be taken before a Magistrate or Gazetted Officer and if such person is "brought" before a Magistrate or Gazetted Officer and if there is no ground for search, such person be discharged forthwith. If there are reasons for taking search, such Magistrate or Gazetted Officer should direct such search in his presence. Therefore, the legislature has taken special care to see that search of such accused should be taken before an independent person who happens to be a Magistrate or Gazetted Officer so as to see that the accused should get all necessary protection offered by the law. Taking a person with the raiding party makes such person impliedly interested in success of the raid. At least, he cannot be said to be totally independent of the work done by the raiding party in the said raid. Provisions of Section 50 have been declared to be mandatory by the Supreme Court and in the matter of Balbir Singh Vs. State of Punjab, Supreme Court has made it very clear that being searched before a Magistrate or Gazetted Officer is an important right which is available to a person who has been apprehended as an accused of an offence punishable under Narcotic Drugs and Psychotropic Substances Act. The Investigating agency cannot be permitted to foil the intention of legislation guaranteeing such an important right available to an accused who is accused of an offence punishable under provisions of Narcotic Drugs and Psychotropic Substances Act by playing tricks. Taking a gazetted officer with the raiding party is a clever trick which seems to be used by raiding party for the purpose of showing that raiding party wanted to do necessary

compliance in respect of provisions of Narcotic Drugs and Psychotropic Substances Act; at the same time foiling such an important right of the accused available to him under provisions of Section 50 of Narcotic Drugs and Psychotropic Substances Act.

I agree with the view expressed by the Orissa High Court in the matter of Bijaya Kumar Subudhi v. State of Orissa (1995 (2) Crimes 724), (supra) in view of discussion above.

Such infirmity in the investigation will have to be given due weightage and that will have to be given due importance while assessing the entitlement of the applicant accused for the bail so far as present bail application is concerned.

Thus, the application is allowed in view of Section 37 of Narcotic Drugs and Psychotropic Substances Act. The applicants are hereby released on bail on each of them furnishing security to the extent of Rs. 50,000/- (fifty thousand) with one surety and PR bond before Additional Sessions Judge, Neemuch in respect of S.T. No. 119/94. The applicants shall not threaten, contact, or induce any of the prosecution witnesses and shall attend the office of C.B.N. Neemuch fortnightly on Sunday any time between 8.00 a. m. to 8.00 till further orders. They shall not indulge in any crime which is punishable under the provisions of Narcotic Drugs and Psychotropic Substances Act. C.C. on payment to both.