
(2013) 09 KAR CK 0350
In the Karnataka High Court
Case No : Criminal Petition No. 11117 of 2013

Deepak Gulabrao Jadhav and Others	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22c

Citation : (2013) 6 KarLJ 260

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : A.G. Mulwadmath, for the Appellant; V.M. Banakar, Additional State Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioners and the learned Additional State Public Prosecutor. The facts leading up to this petition are as follows:

These petitioners are accused of offences punishable u/s 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act", for brevity) and they are said to be related to each other.

It is the case of the petitioners that, they had been to Mahalaxmi Temple at Kolhapur for darshan and while they were returning, their vehicle, an Indica car, was stopped and they were falsely implicated in allegedly having carried Hashish of commercial quantity.

The Excise Inspector, State Vigilance Squad, lodged a complaint on 22.06.2013, to state that, at about 3.30 pm, the Excise Superintendent, State Vigilance Squad, Bangalore, along with his staff were patrolling the high way near Hotel Prarthana on Bangalore-Poona Road at Nippani. At about 4.00 pm, they observed one Mahindra Scorpio vehicle bearing registration No. MH-07/J-130 and one Tata Indica car bearing registration No. MH-07/1-5157, both moving together from

Maharashtra towards Belgaum. The vehicles were intercepted, on suspicion, and were checked. It is claimed that, 3905 grams of Hashish were found in two bags concealed in the said vehicles and therefore, a case has been registered against the petitioners for the offences as aforesaid. The petitioners having been taken into custody had approached the Court below seeking bail on several grounds, the Court below had rejected the same.

2. It is contended by the learned Counsel for the petitioners that, the Hashish, allegedly seized, was not on the person of any of the petitioners. It was said to be contained in two bags, one of which was concealed under the rear passenger seat in the Indica Car as well as in the rear passenger seat in the Scorpio vehicle. There is therefore, no indication that, any of the petitioners were carrying the said substance.

The learned Counsel would further point out that, the petitioners were all travelling in one car and not in two cars as alleged. This is a seriously disputed question and he would further point out that, the panchanama had not been drawn up at the spot, where the vehicles were allegedly intercepted, as it is evident from the panchanama that, the recording of it had started at about 3.30 pm and had concluded at 8.00 pm. It is also forthcoming from the said panchanama that, the entire raiding party had come to Belgaum at 6.00 pm. Therefore, it is evident that the panchanama was not recorded at the spot, where the vehicles were intercepted, but was recorded at Belgaum, since recording of panchanama was said to have been concluded only at 8.00 pm on the said date.

Therefore, when it is seen that, substance that is said to have been seized was not on the person of any of the petitioners, but concealed under the passenger seat of the respective vehicles, the petitioners being mulcted with the allegation of having committed an offence punishable under the NDPS Act, is therefore, misconceived and results in a miscarriage of justice.

The learned Counsel would also point out that, the petitioners being implicated in the present case is, in the background that, a large quantity of Hashish had washed up on the seashore of Devghad and it is in order to explain the same, that the authorities are proceeded to implicate all and sundry including the present petitioners and seeks to question the justification of the petitioners being accused of the offence, when no such material was found on their person.

3. While the learned Additional State Public Prosecutor seeks to justify the petitioners being detained in the custody, as the offence alleged is a serious one and the punishment attributed is imprisonment for 20 years and a fine of Rs. 2 lakh.

4. Having regard to the above circumstances, from the fact that, the punishment that is attracted is so severe, would require the prosecution to establish its case beyond all reasonable doubt. When there is no dispute that the substance in question had been seized from a vehicle, which the petitioners deny were occupied by them, in that, it is the case of the petitioners that, they were all

travelling in one vehicle and not two, as sought to be suggested by the prosecution and the fact that, the substance was actually seized and found concealed under the passenger seat of the respective vehicles, the prosecution would certainly have to establish its case in the trial. Having due regard to the further circumstance that the panchanama was not drawn up at the alleged place where the vehicles were intercepted, this gives room for doubt as to the case of the prosecution. Therefore, the allegations necessarily have to be established at the trial. Hence, the petitioners are found entitled to be enlarged on bail.

The petition is allowed. The petitioners shall be enlarged on bail on their furnishing a self bond for a sum of Rs. 25,000/- each with a solvent surety for a like sum each, subject to the following conditions:

1. The petitioners shall not leave the jurisdiction of the trial Court without seeking leave of that Court.
2. The petitioners shall attend the Court on all dates of hearing.
3. The petitioners shall not influence or seek to threaten the prosecution witnesses in any manner.