
(2016) 04 TP CK 0005

In the Tripura High Court

Case No : B.A. No. 28 of 2016 and A.B No. 25 of 2016

Dilip Sutradhar and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Evidence Act, 1872 — Section 25

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(b)(ii)(c),
Section 23(c), Section 25, Section 35, Section 37, Section 42, Section 55, Section 67

Citation : (2016) 04 TP CK 0005

Hon'ble Judges : Deepak Gupta, C.J.

Bench : Single Bench

Advocate : P.K. Biswas, Sr. Advocate, P. Majumder and C. Bhowmik, Advocates, for the Appellant; R.C. Debnath, Addl. P.P., for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. Anticipatory bail application 25 of 2016 and Bail application 28 of 2015 are being disposed of by a common judgment since they both relate to the same offence registered against the petitioners under Section 20(b)(ii)(c) read with Section 23(c) and Section 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) Act.

2. The prosecution story briefly stated is that on 14.09.2015 one Assistant Sub-Inspector of the 86 Bn. BSF received information provided by G Branch and the Narcotic Control Bureau, Guwahati that some contraband substance is being carried in a vehicle moving in a suspicious manner near the border. The vehicle was chased by the BSF and the driver of the vehicle and one person who was sitting in the vehicle fed from the vehicle and escaped into the thick forest. This occurrence took place near border post No. 2133/5-S, that a distance of approximately 2 k.m from the international border. The vehicle bearing registration No. TR-03 G 0720 was searched and 60 k.g. of ganja was recovered

from the said vehicle. On going through the papers which were found in the vehicle it was found that Dilip Sutradhar, petitioner No. 1 in B.A No. 28 of 2016 was the owner of the said vehicle. The BSF authorities seized the entire ganja packed it properly and produced it before the Sub-Inspector of Excise, Belonia on 15.09.2015 at 10.30 a.m.

3. Thereafter, the Sub-inspector of Excise, Belonia re-seized the entire contraband substance and registered a case under Section 20(b)(ii)(c) read with Section 23(c) and Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

4. The seized ganja along with the vehicle and other documents were produced before the lower court. The case was registered as Special Case No. 01 of 2015 in the Court of the learned Chief Judicial Magistrate, Belonia, South Tripura. A sample was also sent to the Tripura Forensic Science Laboratory, Government of Tripura, Agartala. Notice was served upon Dilip Sutradhar, the owner of the vehicle and also upon Sri Bikash Debnath, petitioner No. 2 in Bail Application No. 28 of 2016 who stated to be the driver of the vehicle. These two persons appeared before the Sub-Inspector of Excise, Belonia, South Tripura and, thereafter, they were produced before the Chief Judicial Magistrate, Belonia on 29.12.2015 and behind bars since 28.12.2015.

5. Final report under Section 173 has been submitted by the Excise Department. Therefore, in this bail application the petitioners have prayed that they be enlarged on bail and the main grounds are that the search and seizure operations have been carried out in total violation of the provisions of Section 42 of the NDPS Act; that the ganja was not seized by the BSF personnel in the presence of witnesses; that the said ganja was not packed and sealed in accordance with the NDPS Act and Rules and then lastly it is submitted that there is a total violation of Section 55 of the NDPS Act.

6. As far as Anticipatory Bail Application No. 25 of 2016 is concerned, in that case the petitioner is Litan Paul alias Sadhu Paul. The case of the prosecution insofar as he is concerned, is that, during interrogation the accused driver Bikash Debnath had stated that on 28.12.2015 he had carried the ganja at the instance of Sadhu Sarkar and one Muslim gentleman and had taken consent of the owner Dilip Sutradhar to carry the ganja. The Muslim gentleman was not named. Thereafter, the CD of 31.12.2015 shows that the I.O visited the area of Barapathari and got to know from the local people that two more persons namely Md. Taj Islam and Sri Sadhu Paul, son of Sankar Paul may be involved in the offence.

7. Thereafter, there is a CD of 04.01.2016 that two notices under Section 67 of the NDPS Act, 1985 were served upon Sri Sadhu Paul son of Sankar Paul and Md. Taj Islam. Md. Taj Islam received the notice but Sadhu Paul denied to receive the notice as the same was served on his nick name. Then again interrogation of Bikash Debnath, driver of the vehicle was done and on 06.01.2016 it is stated

that he corrected his statement and stated that the person was Litan Paul alias Sadhu Paul and not Sadhu Sarkar. At the outset I may mention that the statement of Bikash Debnath, driver may not be admissible in evidence in view of the Section 25 of the Evidence Act. These statements hardly have any evidential value. Even the identity of Litan Paul has not been established properly.

8. As far as the owner and driver Dilip Sutradhar and Bikash Debnath are concerned, I am clearly of the view that there is sufficient material to prima facie proceed against them and even if there are some technical defects, it is for the trial Court to see whether these defects are of such a nature that the trial is vitiated. At this stage I am clearly of the view that where commercial quantity of ganja is involved the rigour of Section 35 and 37 of the NDPS Act will apply and bail cannot be granted.

9. However, as far as Litan Paul alias Sadhu Paul is concerned, it appears to me, that at this stage it cannot be said with any amount of certainty that he is actually involved in the offence. Other than the statement of Bikash Debnath, no corroborating evidence could be pointed out by the learned Additional Public Prosecutor. The statement of one co-accused against another co-accused is a very weak evidence and requires corroboration. Therefore, at this stage I feel that Litan Paul alias Sadhu Paul may be granted Anticipatory Bail.

10. Therefore, it is ordered that in the event of his arrest, the petitioner Litan Paul alias Sadhu Paul shall be enlarged on bail on his furnishing bail bond in the sum of Rs. 10,000/- (Rupees ten thousand) with one surety in the like amount to the satisfaction of the Arresting Officer subject to the following terms and conditions:--

"(i) The petitioner will appear before the Investigating Officer on 09.04.2016 at 10 a.m and on each date thereafter as required by the Investigating Officer by a written order;

(ii) The petitioner is further directed not to tamper with the prosecution witnesses;

(iii) The petitioner is further directed not to in any manner try to influence any of the prosecution witnesses;

(iv) The petitioner is further directed not to cause any hindrance in the investigation;

(v) The petitioner shall not leave Tripura without permission of the appropriate Court;

(vi) In case, the petitioner violates any of the conditions or he does not cooperate with the police during investigation or tries to hamper the investigation in any manner or the police during investigation comes up with more direct evidence against the petitioner, then the State shall be at liberty to apply for cancellation of bail."

On the petitioner fling application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.

As far as B.A. No. 28 of 2016 is concerned, the same is rejected at this stage.

Both the applications are disposed of.