
(2004) 05 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : Bail Application No. 94 of 2003

Foja Singh and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 37, 37(1), 54

Citation : (2004) CriLJ 4375 : (2004) 2 JKJ 526

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : Sunil Sethi and Ravi Dogra, for the Appellant; A.S. Dogra, Dy. AG., for the Respondent

Judgement

S.K. Gupta, J.—This application has been preferred for grant of bail to the petitioners facing trial before the learned Sessions Judge, Jammu,

for the commission of offences contrary to Sections 15/16 of the Narcotic Drugs & Psychotropic Substances Act, 1985, pending at the stage of

recording prosecution evidence after the frame of charge, inter alia on the grounds that (i) there has been violation of Section 57 of the NDPS Act

as no report in respect of arrest and seizure under the Act has been submitted to immediate official superior within 48 hours next after such arrest

and seizure; (ii) Forensic Science Laboratory report does not disclose the percentage of morphine detected in the sample of poppy straw after

analysis; and (iii) the sample seized as per seizure memo is of 200 grams but the packet received by the FSL contains less than 100 grams of

seized contraband and thus amounts to tampering of the sample.

2. The accusations, against the accused, enumerated from the record, in brief,

are that 9.54 quintals poppy straw were seized from the possession of the accused. The truck, from which poppy straw seized, was loaded with arms and ammunition from Jabalpur and reached Police Line, Channi Himmat. That the truck remained halted at Police Line, Channi Himmat and when came out and proceeded towards Srinagar, the poppy straw was recovered from the truck. Police Line, Channi Himmat, is an area guarded by the police personnel. Accused, Foja Singh, is a driver of the truck and belongs to Police Force. Recovery of contraband has been made from the truck driven by Foja Singh and also from the house which is taken on rent by him, in presence of the accused. As per seizure memo, 200 grams of poppy straw (Bhuky) was taken as sample out of the seized contraband and sent for chemical analysis, of course, after having been sealed on spot and got re-sealed by the Magistrate. It was after the receipt of the information of the chemical analysis with regard to the contraband and on conclusion of the investigation, challan was presented in the Court of law. The accused/petitioners were charged under Sections 15/16 of the NDPS Act and statements of some of the witnesses cited in the challan have also been recorded.

3. The application stood contested by the respondent-State and in their objections it is stated that the accused are the employees of Police Department and have taken the undue advantage of the Uniform in carrying 9.54 quintals of poppy straw for sale. That the petitioners had also made an application for bail before the learned Sessions Judge, Jammu, which stood dismissed after taking into consideration all the pleas which have been taken by the petitioners in this application. Lastly, it is submitted that no fresh cause has been made out to maintain the application for the release of the petitioners on bail.

4. I have heard learned counsel appearing for the respective parties and also perused the relevant provisions of law touching the matter in controversy.

5. It may be pointed out at the threshold that Section 37 of the NDPS Act enjoins that the person accused of an offence punishable for a term of imprisonment of 5 years or more shall generally be not released on bail. Negation of bail is a rule and grant is an exception. In Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 37, for granting bail, the Court must on

the basis of record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further that he is not likely to commit any offence while on bail. It is further to be noticed that the conditions for grant of bail indicated in Clause (b) of sub Section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure, 1973 or any other law for the time being in force. Liberal approach in the matter of bail under the NDPS Act is uncalled for.

6. Section 8 of the NDPS Act enacts a prohibition against production, manufacture, possession, sale, purchase, transport, warehousing, use, consumption, import and export or transshipment of any narcotic drug or psychotropic substance except for medical or scientific purpose and to the extent and in the manner provided by the provision of this Act or rules or order made thereunder or in accordance with the term of licence or permit. However, I am concerned in the instant case with the possession and transportation. However, the charge is confined to possession in this case. Possession is the core ingredient to be established u/s 15. If the accused are found in possession of Poppy Straw, which is a narcotic drug within the Clause (xiv) of Section 2, it is for the accused to account for such possession satisfactorily, if not, the presumption u/s 54 comes into play. I need not go into these aspects of the matter in bail application but, however, are relevant to make reference while considering whether or not the accused are guilty of offence with which they are charged.

7. So far as the contention raised by Mr. Sunil Sethi, learned counsel appearing for the petitioners, that the sample seized was 2.00 grams but the FSL report reveals that the packet received contains less than 100 grams of contraband. His further submission is that there is non compliance of the mandatory provisions of Section 57 as no report with regard to the arrest and seizure was sent to the immediate official superior within 48 hours next after such arrest and seizure.

8. Immediately after the arrest and seizure, FIR is registered and copy of the same dispatched to the SSP concerned, which according to Mr.

Dogra, learned Dy.AG appearing for the respondent, is sufficient compliance of Section 57. It is also submitted by Mr. Dogra, Dy.AG, that how

much contraband was taken as sample and how much did it reach to FSL for

chemical analysis is a matter of evidence to be proved during trial.

So far as percentage of morphine is concerned, which is stated to have not been shown by the FSL in their report, it may be pointed out that u/s 8

of the NDPS Act, the very possession of poppy straw, prima facie, constitutes an offence as urged by Mr. Dogra during arguments.

9. There is considerable weight and substance in the submissions made by Mr. Dogra, Dy.AG, in controverting the contentions of the petitioners. It

is pertinent to point out that the Court is not expected to go deep into the probative value of the material on record in bail matters. This is to be

considered and taken into account by the Trial Court at appropriate stage after evidence. The Apex Court in Narcotics Control Bureau Vs.

Kishan Lal and others, handed down/held that unless the conditions prescribed u/s 37 of the NDPS Act are fulfilled, the Court has no discretion to

relax these conditions in order to give the benefit of bail to an accused. All these things have become necessary because the offences under the Act

have the potentiality to cause injury to the society as a whole as compared to other offences under other laws. There can be no relaxity in

enforcement under the provisions of the Act. If, therefore, inspite of this awareness, accused persons are allowed to go on bail on the grounds

aforesaid canvassed before the court or any other technical plea, that would defeat the very purpose of the law. It is only where the Court is

satisfied that there is no material what-so-ever to hold the accused guilty under the Act, then only a bail can be granted.

10. For what has been stated and discussed above, the application of the petitioners, for their release on bail under the NDPS Act, in my opinion,

does not possess any merit and is, accordingly, dismissed.

Record shall be remitted back to the Trial Court forthwith.

The application stands disposed of, accordingly.