

(2009) 12 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : BA No. 30 of 2009

Hardit Singh

APPELLANT

Vs

State of Jammu & Kashmir and Another

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

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

Citation : (2010) 2 JKJ 375

Hon'ble Judges : Barin Ghosh, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—A truck was seized, which contained contraband (90 Kgs of Poppy straw), and was being driven by the applicant. He

has been booked for having contravened the provisions of the Narcotics Drugs and Psychotropic Substances Act, 1985. He has filed the present

application seeking bail on the ground that he is in custody since December 16, 2006, and the trial has not progressed an inch, all though the

charge sheet was filed a long time back.

2. The learned Counsel for the applicant submitted that, by unreasonable delay in commencing and concluding the trial, fundamental right of the

applicant of having speedy justice has been denied. The said contention is not germane while considering the prayer made by the accused, who is

said to have committed an offence punishable under the said Act, for grant of bail.

3. Learned Counsel for the applicant submitted that, in relation to the subject matter of the offence, four persons were accused, out of whom the

case of one, being a juvenile, has been separated, and the other two have been granted bail. He submitted that in such circumstances, the applicant is also entitled to grant of bail. One of the accused persons, who has been granted bail, was not associated with the vehicle with which the applicant was associated. The other accused person, who has been granted bail, was charged on the basis of statements allegedly made by the applicant, as has been noted in the order granting bail.

4. In such circumstances, the cases of those persons, who have obtained bail, and the case of the applicant cannot be equated. In terms of Section 37 of the Narcotics Drugs and Psychotropic Substances Act, it is obligatory on the part of Court, while exercising discretion to grant bail to the bail seeker, to record satisfaction that there are reasonable grounds for believing that bail seeker is not guilty of the offence alleged against him. The language is so couched that it becomes obligatory on the part of the bail seeker to make an attempt to satisfy the Court that he is not guilty of the offence alleged to have been committed by him. In the instant case, no such attempt has been made by the applicant. According to the prosecution case, the vehicle in question, which contained commercial quantity of contraband, was being driven by the applicant.

5. In the circumstances, having not been able to record satisfaction that there are reasonable grounds for believing that applicant is not guilty of offence alleged against him, I am unable to exercise my discretion to grant bail to the applicant.

6. The application, accordingly, fails and is dismissed.

7. Observations as above, shall remain confined to the reasons for not exercising discretion for grant of bail and shall not prejudice the applicant, in any manner, whatsoever, either at the trial or at any other stage.

8. Record be returned. Trial court is requested to expedite the trial.