

(2002) 12 DEL CK 0046

In the Delhi High Court

Case No : Criminal M. (M) 3761 of 2002

Manoj Kumar Gupta

APPELLANT

Vs

State N.C.T. of Delhi

RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 29, 37

Citation : (2003) CriLJ 2353 : (2003) 102 DLT 765 : (2003) 66 DRJ 572 :
(2003) 87 ECC 99 : (2003) 2 RCR(Criminal) 210

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Jitender Sethi, for the Appellant; Pawan Sharma, for the Respondent

Judgement

R.C. Chopra, J.—This petition u/s 439 of the Code of Criminal Procedure is for grant of bail to the petitioner, who was arrested in case FIR No. 14/01 u/s 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act" only).

2. I have heard learned counsel for the petitioner and learned counsel for the respondent. I have gone through the records.

3. Learned counsel for the petitioner has submitted that no recovery of contraband was made from the petitioner and he was arrested in this case merely on the basis of a disclosure statement made by co-accused and alleged recovery of a diary from him in which the name of co-accused Dinesh Kumar was mentioned and it was recorded that the petitioner had supplied him the contraband. Learned counsel for the petitioner argues that neither the alleged disclosure statement of the co-accused is admissible in evidence nor entries in the diary can be used in evidence against the petitioner to record a conviction against him. On the other hand, learned counsel for the respondent argues that on the basis of the entries in the diary, the petitioner may be convicted and as such, in view of the bar created by Section 37 of the Act, the petitioner is not

entitled to grant of bail during the pendency of the trial, as prayed. Learned counsel for the petitioner relies upon an order passed by Hon"ble Mr. Justice S.K. Agarwal on 17.5.2002 in CrI. M(M) 3879/01 & CrI. M. 1386/02 ordering release of an accused on bail, who sought to be implicated on the basis of a disclosure statement and some nothings in a diary recovered from his personal search. To the contrary, learned counsel for the respondent relies upon a judgment of the Apex Court in Babua @ Tazmul Hossain v. The State of Orissa, reported in 2001 (1) Crimes 215 (SC) to submit that such accused should not be released on bail during the pendency of the trial.

4. After considering the submissions made by learned counsel for the parties, this Court is of the considered view that prima facie there appears to be no believable evidence against the petitioner to hold him guilty of the offence under Sections 21/29 of the Act. The disclosure statement of a co-accused is not substantive evidence. The entry in the diary allegedly recovered from the petitioner, apart from clouded under the question of admissibility, is a highly doubtful piece of evidence for the reason that it would be very difficult for the Court to accept that after about one year and four months of the arrest of co-accused, Dinesh Kumar and recovery of the contraband from him, the petitioner was keeping the said incriminating diary in his possession so as to make it available to the prosecution as evidence against him. The Apex Court even in the case of Babua v. State of Orissa (supra) had held that the bar of Section 37 would be attracted if the Court is of the view that the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner. The Courts are not expected to accept every word of the prosecution as gospel truth and invoke the bar of Section 37 against an accused even if the evidence against him appears to be ridiculous and unbelievable. Courts can not take any risk in the matter of liberty of the citizens.

5. Under the circumstances, this Court is of the considered view that the petitioner has succeeded in making out a case for bail in his favor inasmuch as there are reasonable grounds to believe that the accused is not guilty of the offence for which he is charged. In view of the fact that the petitioner has no antecedents of crime, it can be safely said that he is not likely to commit any offence, if released on bail. Accordingly, the application is allowed and the petitioner is ordered to be released on bail upon his executing a personal bond in the sum of Rs. 25,000/- with two sureties each in the like amount to the satisfaction of the Court concerned.

6. Nothing stated herein shall be taken as an expression of opinion on the merits of the case before Trial Court as the observations made by this Court are tentative only.

The petition stands disposed of.