
(2005) 08 SC CK 0015

In the Supreme Court Of India

Case No : Criminal Appeal No"s. 1046 and 1047 of 2005

Narcotics Control Bureau

APPELLANT

Vs

Karma Phuntsok and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29, 37,
37(1), 37(3)

Citation : (2006) 3 ACR 3418 : (2005) 12 SCC 480

Hon'ble Judges : H. K. Sema, J;B. N. Srikrishna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.K. Sema and B.N. Srikrishna, JJ.—Delay condoned.

2. Leave granted.

3. These appeals are directed against the orders dated 11.9.2003 and 25.9.2003, passed by the Delhi High Court, suspending the conviction during the pendency of the appeal.

4. The Respondents were convicted u/s 29 read with Section 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, (the N.D.P.S. Act) and sentenced to rigorous imprisonment for 10 years and a fine of Rs. 1,000. On appeals being filed, the learned Judge suspended the sentence and the Respondents were enlarged on bail on executing a personal bond for a sum of Rs. 50,000 with one surety for the like amount, to the satisfaction of the trial court. We have perused the order passed by the learned Judge and we find that there is not even a whisper about the condition contained in Section 37 of the N.D.P.S. Act with regard to enlarging of the accused on bail. Mr. Jaspal Singh, learned senior counsel appearing for the Respondents contended that the learned Public Prosecutor did not oppose the bail as contained in Section 37(1)(b)(ii) of

the N.D.P.S. Act. According to him, unless the Public Prosecutor opposes the bail application, Section 37 will not apply. Mr. Singh seriously contended that inasmuch as the Appellants have not put on record that the Public Prosecutor had opposed the granting of bail, it must be presumed that this is an order covered u/s 37(3) read with Section 439, Code of Criminal Procedure. To say the least, the argument appears to be baseless. We cannot accept the contention that in a matter involving seizure of commercial quantity of a substance prohibited by the N.D.P.S. Act when the Public Prosecutor appears on notice of the bail application he would be standing there as a mute spectator not opposing the bail application unless he was at the back of the accused. We find no substance in this argument. In our view, the very fact that the Public Prosecutor appeared would suggest that he appeared to oppose the bail application. In any event, the order of the High Court does not suggest that the Public Prosecutor had agreed for bail being granted. In the aforesaid circumstances, we find no substance whatsoever in the contention raised by Mr. Singh.

5. In the view that we have taken, both the orders dated 11.9.2003 and 25.9.2003, passed by the High Court are set aside and the appeals are allowed.

6. The bail bonds of the accused stand cancelled. They are directed to be taken back into custody forthwith. Compliance report within two weeks.