
(1994) 09 RAJ CK 0032

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail A. No. 1380 and 1391 of 1994

Ramdeo and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Evidence Act, 1872 — Section 25, 27

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37, 67

Citation : (1994) 2 RLW 653 : (1994) 2 RLW 47 : (1993) 3 WLC 33 : (1994) 2 WLN 512

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Saxena, J.—Heard. Perused the case diary.

2. It appears that on receiving a credible information that petitioner Ramdeo Gujar, resident of village Math, is running a tea stall near the Bus stand, on which Gheesa Ram Gujar sits and sells contraband opium and that if a search is made of the said stall, opium can be recovered; Ghewar Chand SHO, Police Station, Sadar, Pali, alongwith Police party reached the Bus stand of village Math. Ghewar Chand also took with him "motbirs." When they reached near the Bus stand, they saw that petitioner Jaswant Singh hastily left the place and started going towards trucks. There upon his search was taken and, it is alleged, that 45 gms. of opium was recovered from his possession for which he did not have any licence. Jaswant Singh was arrested. It is alleged that he voluntarily gave information u/s 27 of the Evidence Act to the effect that he had purchased the said opium from the tea stall run by Gheesa Ram. There upon the tea stall on which Gheesa Ram was sitting, was searched. It is alleged that Gheesa Ram after digging the floor of the tea stall, took out a packet, which contained 170 gms. of opium for which he did not have any licence. Gheesa Ram was also arrested and during interrogation, he disclosed that the owner of the said tea stall was

Ramdeo Gujar, but for last 2 months the latter had given it to him for running the said tea stall and that Ramdeo also used to give Rs. 200/- per month of him for selling the opium. There upon, the SHO also arrested the petitioner Ramdeo on the same day. The samples were taken from the opium recovered from Jaswant Singh and Gheesa Ram and sent to the Forensic Science Laboratory for chemical examination and report is still awaited and investigation is going on.

3. Shri Mohanani, learned Counsel for petitioner-Ramdeo, has vehemently contended that in this case there is not a shred of evidence to prima facie show that the petitioner-Ramdeo is the owner of the said tea stall and that he indulged in purchasing and selling opium, that the interrogatory statements of co-accused Jaswant Singh and Gheesa Ram are not admissible in evidence and as such there is no reasonable ground to believe that the petitioner has committed any offence punishable under the N.D.P.S. Act or that in future he is likely to commit such offence. The learned P.P. contends that the credible information was to the effect that said tea stall belongs to petitioner Ramdeo and that he indulges in selling the opium. But a careful perusal of the case diary even does not disclose the identity of the source from whom the alleged reliable information was received by the SHO. Co-accused, Jaswant Singh and Gheesa Ram were arrested on 11.7.1994 immediately after the alleged recovery of opium and thereafter they were interrogated. Thus, those interrogatory statements cannot be deemed to be their statements u/s 67 of the N.D.P.S. Act and these cannot be read against the petitioner.

4. In *Bhinya Ram v. State* 1993 Cri.LJ. 609, it has been held that the statement of co-accused before the Police Officer is not admissible u/s 25 of the Evidence Act.

5. The Investigation Officer has not collected any independent evidence even to prima facie show that the tea stall from, which the alleged recovery of 170 gms. opium was made, was owned and run by the petitioner-Ramdeo or that he used to purchase and sell opium through co-accused Gheesa Ram. In such circumstances, in my considered opinion, no reasonable and sufficient ground exists to believe that the petitioner has committed an offence punishable under the N.D.P.S. Act or that he is likely to commit such offence in future. Therefore, petitioner Ramdeo deserves to be enlarged on bail.

6. As regard petitioner- Jaswant Singh, Shri M.D.Purohit has strenuously contended that petitioner is a driver and Rai Sikh by case and that he does not consume any opium. According to him the Police party raided the tea stall, where petitioner- Jaswant Singh was taking tea. The SHO asked the petitioner to accompany him to the police Station and that there a false case has been foisted against him. These facts do not get substantiated on a careful perusal of the case diary and from the statements of motbirs of recovery memo. Hence, I do not find any sufficient, reasonable and valid grounds to, prima facie, believe that the petitioner- Jaswant Singh has not committed an offence under the N.D.P.S. Act. Therefore, keeping in view the mandatory provisions of Section 37 of the

N.D.P.S. Act, he does not deserve to be released on bail.

7. In the result, I allow bail petition filed by petitioner Ramdeo and order that he be released on bail, provided that he (Ramdeo son of Mewa Ram, Gujar, resident of math, Police Station- Sadar, District-Pali, presently lodged in Central Jail, Jodhpur) executes his personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) with two sound and substantial sureties in the amount of Rs. 5000/- to the satisfaction of learned Special Judge, N.D.P.S. Cases Court, Jodhpur, for his regular appearance before the said court on each and every date of hearing and as and when ordered to do so, in connection with the case arising out of FIR no. 83/94, P.S.Sadar, Pali. The petitioner shall further give a written undertaking to the effect that he shall keep peace and be of good behaviour and shall not temper with the prosecution evidence in any manner and shall not commit any offence punishable under the N.D.P.S. Act during trial of the case.

8. The bail petition filed on behalf of petitioner Jaswant Singh is hereby dismissed. However, he may move fresh bail petition after the statements of motbirs and the officer who effected the alleged recovery from his possession, are recovded by the learned trial Judge.