

(2016) 08 RAJ CK 0073

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 7122 of 2016

Ramesh Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 47
Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 64A, 7A(2)(c)(d)(e)(f), 8

Citation : (2016) 4 CriLR 1796 : (2016) 3 RajCriC 1172 : (2017) 1 WLC 43

Hon'ble Judges : Mr. Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Mr. Virendra Sharma and Mr. Jitendra Pandey, Advocates, for the Petitioner; Mr. Deepak Chauhan and Mr. N.K. Singhal, Amicus curiae, for the Respondent; Mr. R.R. Baisla, Public Prosecutor, for the State; Mr. Sugan Singh, S.H.O. P.S. Kotwali Baran, for the

Final Decision : Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.—Instant application has been preferred under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in a case arising out of First Information Report bearing No.380/2016 registered at Police Station Kotwali Baran District Baran for commission of offence punishable under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after to be called as "Act of 1985").

2. Succinctly stated facts of the present case are that on 09.05.2016 at about 11:30 P.M. Police party, during course of Nakabandi, apprehended the accused-petitioner on suspicion and from his possession recovered two grams heroine (Diacetylmorphine).

3. Mr. R.R. Baisla, learned Public Prosecutor appearing for the State of Rajasthan, has informed this Court that the accused-petitioner is also involved in two other

cases, where quantity of smack varying from one gram to two grams was recovered from the petitioner.

4. Considering the quantity recovered and the fact that the accused-petitioner was twice arrested earlier for small recovery, it is to be inferred that the petitioner is not involved in the trade of sale and purchase of the Narcotic Drugs and Psychotropic Substances, but is a drug-addict.

5. Section 64-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 provides immunity from prosecution to addicts volunteering for treatment.

6. Section 64-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as under :-

"64A Immunity from prosecution to addicts volunteering for treatment :- Any addict, who is charged with an offence punishable under Section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under Section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction."

7. The Union Minister of Health & Family Welfare of the Government of India has taken initiative to provide outdoor and indoor centres for patients who are drug addicts. Deaddiction Centres have not been established in each and every District in the State of Rajasthan. This Court is informed that in District Baran, no drug addiction Centre is being run by the Government or by Non-Government Organization (NGO).

8. De-addiction Centres providing medical treatment, psychological counsellings and programme for rehabilitation to drug addicts are need of the hour. They are necessary for reformation of innocent, who are allured to use drugs and to curbe menance of narcotic trade and to save the youth of the State of Rajasthan.

9. A reference can be made to Sections 4, 7, 7-A and 7-B of the Act of 1985. Section 4 makes it mandatory upon Central Government to take measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. Section 4 (d) of the Act of 1985 make it obligatory upon state to identify addicts, ensure their treatment, after care, provide education to them and work for their rehabilitation and social reintegration.

10. In the present case, considering the sentence of six months prescribed, the present application is, hereby, accepted and the petitioner is ordered to be released on bail during the pendency of the trial, to the satisfaction of the trial

Court with a further direction that the trial Court shall acquaint the petitioner with the beneficial provision of Section 64-A of the Act and ensure that the petitioner is sent to De-addiction Centre of State so that the petitioner is cured and is not rearrested in a case of similar nature.

11. Registry is directed to assign a separate docket number to this order and treat the same as "suo-motu Writ" in the "Public Interest Litigation" so that endeavour is made by the Court towards establishment of De-addiction Centres in all the Districts of State of Rajasthan in consonance with provisions of the Act, particularly in relation to the obligation cast upon State under Section 4 (d) of the Act of 1985. Furthermore, to encourage number of Non-government organisations to undertake necessary initiations to wean away drug addicts from the use of Narcotic Drugs and Psychotropic Substances.

12. A request is made to the Bench hearing "Public Interest Litigation" to oversee that the policy/scheme is formulated by the State regarding establishment of De-addiction Centres in each District and the required steps are undertaken by the State Government to prevent use of the Narcotic Drugs and Psychotropic Substances in the State of Rajasthan by curbing sale and purchase of the Narcotic Drugs and Psychotropic Substances in the State of Rajasthan. State be also impressed to take remedial measures to educate the youth by propagating ill-effects of Narcotic Drugs and Psychotropic Substances through print, audio and visual media.

13. A further direction is necessary to be issued by the Bench hearing "Public Interest Litigation" to the Union of India to disclose the amount remitted to the State of Rajasthan, out of National Fund for Control of Drug Abuse or the amount utilised in the State of Rajasthan out of the fund for controlling the abuse of narcotic drugs, psychotropic substances for identifying, treating, rehabilitating addicts towards prevention of drug abuse; educating public against drug abuse.

14. As per mandate of Section 7-A (2) (c) (d) (e) (f) of the Act of 1985, Union of India may be asked to disclose as to how much funds have been utilised and spent in the State of Rajasthan and what is a contribution of the Union of India out of the dedicated "Fund" towards State of Rajasthan, qua establishment of de-addiction centres. Union of India be also directed to inform this Court that what steps have been taken in the State of Rajasthan and what preventive measures have been initiated by the Union of India.

15. The time has come for the Union of India and State of Rajasthan to fulfil directions given in the Article 47 of the Constitution of India. The Article 47 of the Constitution of India reads as under :-

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of

intoxicating drinks and of drugs which are injurious to health."

16. Article 47 of the Constitution of India cast a duty upon Union of India and the State to make efforts for prevention of intoxicating drinks and drugs which are injurious to health.

17. The Bench hearing "Public Interest Litigation" is requested to take into consideration broad canvass and the entire gamut while dealing with the various issues in the light of Sections 4, 7, 7-A and 7-B read with Section 64-A of the Act of 1985 and Article 47 of the Constitution of India for betterment of people of State of Rajasthan.