
(2011) 11 PAT CK 0092

In the Patna High Court

Case No : Criminal Miscellaneous No. 29570 of 2011

Rasool Azam @ Raisool Azam @ Sukat

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 19, 24, 27A, 36, 36A

Citation : (2012) 3 PLJR 713

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Judgement

Mandhata Singh, J.—Heard counsel for the parties. 24 kgs of Ganja is recovered from the possession of this petitioner that has been made ground for refusal of his earlier prayer for bail.

2. The submission of learned counsel for the petitioner is that petitioner remained in custody since 23.3.2004 and sub-section 3 of Section 36A of Narcotic Drugs and Psychotropic Substances Act (hereinafter to be referred to as "the NDPS Act") if is taken into consideration the bar u/s 37 of the NDPS Act will not operate for High Court. Sub-section 3 of Section 36A of the NDPS Act runs as follows:--

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail u/s 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted u/s 36.

3. Sub-section 3 of Section 36A of the NDPS Act is clear that the provision u/s 36A of the NDPS Act does not affect the special powers of High Court regarding bail u/s 439 Cr.P.C. and the High Court may exercise such power including the

power under clause (b) of sub-section 1 of Section 439 Cr.P.C. It is made clear that no bar is created for exercise of power for bail by the High Court u/s 36 of the NDPS Act. Any bar is created u/s 37 of the NDPS Act which runs as follows:--

37. Offences to be cognizable and non-bailable.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for (offences u/s 19 or Section 24 or Section 27A and also for offences involving commercial quantity) shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

4. Sub-section 2 of Section 37 of the NDPS Act is clear that limitations on granting bail are in addition to limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force for the commercial quantity only and not for small quantity or quantity more than small quantity and less than commercial quantity. So it is observed that the bar created by Section 37 of the NDPS Act is applicable in the case and petitioner's prayer for bail is again rejected.