

(2005) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1156 of 2005

S. Nagaraj

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 1993 — Rule 7
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 12, 19, 24, 25A, 27A

Citation : (2005) 1 ALD 777 : (2005) 1 ALD(Cri) 777 : (2005) 2 ALT(Cri) 224 : (2005) 2 APLJ 42 : (2005) CriLJ 3913 : (2005) 3 RCR(Criminal) 354

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : Rachna S.W, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Gopala Krishna Tamada, J.—The petitioner, who is the Managing Partner in M/s. Raj Biotech Pharma, Hyderabad, and was issued summons u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") apprehending arrest at any time by the Intelligence Officer, Narcotics Control Bureau, South Zonal Unit, C-3A, II Floor, Rajaji Bhavan, Besant Nagar, Chennai, filed this petition seeking anticipatory bail.

2. The facts are that the petitioner is the licenced manufacturer of drugs and carrying on a pharmaceuticals business in the name and style of M/s. Raj Biotech Pharma, at Uppal, Hyderabad. Basing on the seizure of a stock 67.160 Kgs of Ephedrine on 9-12-2004 from the godown of Andhra Pradesh Express Services Private Limited, Kalba Devi Road, Mumbai, and also basing on the statement of one K.V. Satyanarayana, who booked the said consignment at the instance of one Hitesh Dhirajlal Mojoria of Secunderabad on 8-2-2005 from the petitioner, the officers of Narcotics Control Bureau visited the petitioner's premises on 10-2-2005. Though the officers could not find any illegality insofar as his business is concerned, they found the records relating to statutory returns from

1-4-2004 alone, but they could not find the records prior to 1-4-2004. As the said non-submission of statutory returns amounts to violation, the said authorities were constrained to issue the said summons u/s 67 of the NDPS Act directing the petitioner to appear before the Intelligence Officer for giving evidence and/ or producing documents in respect of an enquiry being made by him in connection with the alleged trafficking and seizure of about 67.160 Kgs of Ephedrine by Mumbai, NOs., on 9-12-2004.

3. I noticed that the Central Government Standing Counsel has filed a counter stating that the said summons were issued to ascertain the truth and, therefore, it cannot be said that at the instance of the summons, the petitioner may be arrested. It is further stated in the said counter that according to Section 37 of the Act, unless and until the Court is satisfied that there are reasonable grounds for believing that he is not guilty of any offence mentioned u/s 37 of the Act, he shall not be released on bail.

4. Heard both the Counsel.

5. According to the learned Senior Counsel Mr. Padmanabha Reddy, the contravention alleged against the petitioner is not one of those offences enshrined u/s 37 of the Act. The offences mentioned u/s 37 of the Act are Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity. According to him, from a reading of the Mahazar and the summons, it is clear that it is only non-submission of statutory returns prior to 1-4-2004 and nothing more than that. The said non-submission of the statutory returns may be a violation in terms of Rule 7 of the Rules issued by the Government invoking the powers u/s 9A of the said Act. If at all there is any contravention of the orders made u/s 9A, it only attracts the provisions of Section 25A and hence, according to the learned Senior Counsel it is not one of the offences falling u/s 37 of the Act, where the Court can reject bail.

6. The further submission of the learned Senior Counsel is that though no crime is registered, the issuance of the summons directing the petitioner not to leave the premises without permission is leading to a reasonable apprehension in the mind of the petitioner that he may be arrested as and when he appears before the authorities.

7. On the contrary, the learned Standing Counsel for Central Government reiterated the contentions mentioned in the counter and further submitted that the apprehension is not at all reasonable. Only for the purpose of ascertaining the truth or otherwise, the said summons were issued and the issuance of summons itself cannot be said to be reasonable apprehension.

8. In the light of the said submissions made by both the Counsel, it is necessary to extract the relevant provisions of the N.D.P.S. Act and also the order of 1993.

9. Section 9A of the Act deals with power to control and regulate controlled substances, and the order i.e., Narcotic Drugs and Psychotropic Substances

(Regulation of Controlled Substances) Order, 1993 came into existence by virtue of the said powers conferred u/s 9A. Rule 7 of the said, order deals with filing of returns. It reads thus:--

"Every person mentioned in Clause 3 of this Order shall send quarterly return by registered post in Form 4 or Form 5, as the case may be, to the concerned Zonal Director Narcotics Control Bureau, whose address is given in the Form. The quarters for this purpose shall be January to March, April to June. July to September and October to December. The return shall be dispatched before the last day of the month following the quarter."

10. Section 25A of the Act deals with punishment for contravention of orders made u/s 9A.

"If any person contravenes an order made u/s 9A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees."

11. From a reading of the above provisions of law coupled with the facts culled out from the arguments, it is clear that the non-filing of returns at best may attract the provisions of Section 25A but not the offences mentioned u/s 37 of the Act.

12. Section 37 of the Act deals with offences to be cognizable and non-bailable and it reads thus :--

"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.

13. Section 19 of the Act deals with punishment for embezzlement of opium by cultivator. Section 24 deals with punishment for external dealings in narcotic drugs and psychotropic substances in contravention of Section 12. Section 27A of the Act deals with punishment for financing illicit traffic and harbouring offenders.

14. Considering the above provisions, this Court is of the view that the said sections i.e., Sections 19, 24 or 27A have no application. Further, as the case on hand is one relating to the non-submission of the statutory returns, it cannot be said that it is an offence involving commercial quantity. Even if it is presumed

that the offence is, one falling under any of the provisions mentioned in Section 37 of the Act, still the Court can grant bail, if it is satisfied that he is not guilty of those offences. Hence, the contention of the learned Standing Counsel that the Court shall reject the bail in view of Section 37 cannot be accepted.

15. No doubt, it is settled proposition of law that without there being a crime registered, the Courts shall not grant blanket orders. In the normal course, this Court would have dismissed this application on the sole ground that no crime is registered and only summons were issued. But, in the instant case, the said summons were issued directing the petitioner not only to appear but also not to leave the premises without permission. In my considered view, there is no necessity for the authorities to insert the word "the petitioner shall not leave the premises without permission" if it is mere summons for appearance. The said insertion of words in summons that the petitioner shall not leave the premises without permission definitely leads to a reasonable apprehension of being arrested as and when the petitioner appears before the Officer. Apart from that, as the alleged offence is only non-submission of statutory returns prior to 1-4-2004, I feel that it is a fit case to grant anticipatory bail.

16. Accordingly, this criminal petition is allowed. There shall be a direction to the Intelligence Officer, Narcotics Control Bureau, South Zonal Unit, C-3.A, II Floor, Rajaji Bhavan, Besant Nagar, Chennai, who issued the summons, to release the petitioner, in the event of his arrest in connection with the summons dated 11-2-2005 and the mahazar dated 10-2-2005, on condition of the petitioner executing a bond in a sum of Rs. 50,000/- (Rupees fifty thousand only) with two sureties each for like sum to the satisfaction of the said Officer i.e., Intelligence Officer, Narcotics Control Bureau, South Zonal Unit, Chennai.

17. The petitioner is directed to appear before the officer and cooperate with him in all aspects and he shall produce: all records as required by the said Officer.