

(1994) 07 MAD CK 0046

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 3236 in Cri. A. No. 319 of 1994

S.A. Jamal Shah

APPELLANT

Vs

Intelligence Officer, Directorate of Revenue Intelligence,
Tiruchirapalli

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 4, 432, 433, 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 27, 32A, 33, 36

Citation : (1995) CriLJ 2771 : (1994) 2 LW(Cri) 549

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : Shri A.A. Selvam, for the Appellant; Shri P. Rajamanickam, Govt. P.P., for the Respondent

Judgement

1. The petitioner was the third accused in C.C. No. 306 of 1993 on the file of the Special Judge (Sessions Judge designated under the Narcotic

Drugs and Psychotropic Substances Act, 1985), Madurai.

2. He, on trial, for refraction or violation of Section 8(c) punishable u/s 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act

No. 61 of 1985 - as amended by Act No. 2 of 1989 - for short "NDPS Act") was found guilty, convicted thereunder and sentenced to rigorous

imprisonment for ten years and a fine of one lakh of rupees, in default to suffer simple imprisonment for three years.

3. Aggrieved by the said conviction and sentence, he preferred Appeal No. 319 of 1994 on the file of this Court. Along with the said appeal, he

also filed the present petition praying to suspend the sentence so imposed on him and release him on bail, pending disposal of the appeal.

4. On this petition, notice had been ordered to the State represented by the Intelligence Officer, Directorate of Revenue Intelligence, Trichy

(respondent), who, on receipt of the same, was represented by Mr. P. Rajamanickam, learned Special Public Prosecutor.

5. Mr. A. A. Selvam, learned counsel appearing for the petitioner and Mr. P. Rajamanickam, learned Special Public Prosecutor were heard.

6. From their submissions, three moot questions arise for consideration :

(1) Whether suspension of sentence and consequent release on bail, pending disposal of the appeal is legally permissible to an offender, like the

petitioner, convicted for an offence under the provisions of NDPS Act ?

(2) Whether Sections 32-A thereof bars suspension of sentence, pending disposal of the appeal ?

(3) Whether the materials, available as against a person, accused of an offence under NDPS Act, prior to and during the stage of trial, can, in the

eye of law, be construed as *prima facie* materials for the purpose of consideration of grant or otherwise of bail, after the termination of trial,

culminating in conviction and sentence ?

7. It is not as if these three questions did not at all arise for consideration, anterior in point of time and the plain fact is such questions did come to

be canvassed before me, in the case of *Velu Thevar v. State*, Represented By Inspector of Police. NIB, CID, Theni, 1992 Mad LW (Cri) 187.

The rationale or reasoning given for answering those three questions therein will hold good for this case also. Better therefore it is to refer to

paragraphs 5 to 13 therein, hereinbelow, reflecting the same :

5. This Act, being a special enactment to make stringent provision for the control and regulation of operations relating to narcotic drugs and

psychotropic substances in our motherland, special provisions had been made relating to the release on bail of offenders accused of an offence

under the Act, in the shape of enactment of a provision, namely, S. 37, which provides for certain stringent limitations in the matter of grant of bail

to such offenders. The said section itself starts with a non obstante clause, namely,

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)"".

6. The power of the Court is traceable to the salient provisions adumbrated under

S. 439 of the Code of Criminal Procedure, 1973 (Act 2 of 1974 - in short "the Code") Sub-section (3) of S. 36-A of the Act preserves the power of the Court in the matter of grant of bail by prescribing, Nothing contained in this Section shall be deemed to affect the special powers of the High Court regarding bail under 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 9(1) of that Section as if the reference to "Magistrate" in that Section included as a reference to a "Special Court" constituted under S. 36.

7A. By the enactment of a provision, like this, it looks as though the powers of this Court, in the matter of grant of bail under S. 439 of the Code, even in respect of offenders, accused of offences under this Act, are unfettered, in the sense of such an exercise of power is not even subjected to serious and stringent limitations, provided for under S. 37 of the Act, and as if such a provision, if at all, is applicable to the other forums, namely, the Courts other than the High Courts of Judicature.

8. The apex of the judicial administration of this country, while seizing of such a situation came to consider the power of the High Courts in the matter of grant of bail to persons accused of offences under the Act in the decisions reported in Narcotics Control Bureau Vs. Kishan Lal and others, and the Supreme Court in paragraph 6 said thus (at page 656 of Cri LJ) :-

Section 37 as amended starts with a non-obstante clause stating that "Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein were satisfied. The

NDPS Act is a special, enactment and as already noted it was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provision of S. 37 of

NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr.P.C. regarding bail, in our view, it cannot be held that the High Court's powers to grant bail u/S. 439, Cr.P.C. are not subject to the limitation mentioned under S. 37 of NDPS Act. The non obstante

clause with which the section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In case of

inconsistency between S. 439, Cr.P.C. and S. 37 of the NDPS Act, S. 37 prevails. In this context, S. 4, Cr.P.C., may be noted which reads thus :

(4) Trial of offences under the Indian Penal Code and other laws :-

(1) All offences under the Indian Penal Code (45 of 1860), shall be investigated, inquired into, tried and otherwise dealt with according to the

provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provision but subject

to any enactment for the time being in force, regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

It can thus be seen that when there is a special enactment in force relating to the manner of investigation, enquiry or otherwise dealing with such

offences, the other powers under Cr.P.C. should be subject to such special enactment. In interpreting the scope of such a statute the dominant

purpose underlying the statute has to be borne in mind. In *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, ,

regarding the mode of interpretation, the Supreme Court observed as follows (at page 654 of Cri LJ) :

The dominant purpose in construing a statute is to ascertain the intention of Parliament. One of the well recognised canons of construction is that

the Legislature speaks its mind by way of correct expression and unless there is any ambiguity in the language of the provision, the Court should

adopt literal construction if it does not lead to an absurdity.

As already noted S. 37 of the NDPS Act starts with a non obstante clauses stating that ""Notwithstanding anything contained in the Code of

Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are

satisfied. Consequently, the power to grant bail under any of the provisions of Cr.P.C. should necessarily be subject to the conditions mentioned in

S. 37 of the NDPS Act.

9. It is thus clear from what the Supreme Court has stated as above, that the power of this Court under S. 439 of the Code in the matter of grant

of bail to persons accused of an offence under this Act is subject to the limitations that had been provided for under S. 37 of the Act.

10. There cannot be any pale of controversy that this Act does not contain any provision as regards the suspension of sentence of persons accused

of and subsequently convicted on trial pending appeal, and if at all any provision is there, it is only traceable to the general provision as regards the

appeal and revision, as had been provided for under S. 36-B of the Act, which prescribes :

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters 29 and 30 of the Code of Criminal Procedure,

1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying

cases within the local limits of the jurisdiction of the High Court.

11. The two chapters referred to in that section deal with the procedural aspects in the matter of appeals, reference and revision and nothing more.

Apart from such a general provision there is one more, referable to the provision contained in Section 32-A of the Act dealing with the suspension,

remission or commutation in any sentence awarded under this Act and this section reads thus :

32-A. No suspension, remission or commutation in any sentence awarded under this Act :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject

to the provisions of S. 33, no sentence awarded under this Act (other than S. 27) shall be suspended or remitted or commuted.

12. By a cursory look and glance of the said section, although it may appear that the section does empower the Court to grant suspension of

sentence, it is not really so and the same will be patent if a little bit of further probe is made therefor. It may be recapitulated at this juncture that

two specific provisions in the shape of Ss. 432 and 433 had been enacted in the Code as respects suspension, remission and commutation of

sentence. Those two sections recognise the power of the State Government to suspend, remit or commute the sentence of persons convicted of an

offence and undergoing the incarceration in jail. It is with a view to curtail the executive power of the Government in the matter of suspension,

remission and commutation of sentence of persons convicted of an offence under this Act, a special provision under S. 32-A of the Act has been

enacted by the introduction of a non obstante clause in the said section, namely, ""Notwithstanding anything contained in the Code of Criminal

Procedure, 1973 (2 of 1974)""", obviously in a bid to make stringent provisions for the control and regulation of operations relating to narcotic drugs

and psychotropic substances. As such, there is no express exclusion of the power of this Court in the matter of suspension of sentence of an

offenders convicted of offence, which had been recognised under S. 389 of the Order. It has to be borne in mind at this juncture that simply

because the power of this Court under S. 439 of the Code has been preserved, it does not mean such a power can be exercised dehors stringent

provisions contained in S. 37 of the Act regulating the grant of bail to offenders accused of offences under the Act inasmuch as suspension of

sentence of offenders convicted under the Act pending appeal involves grant of bail.

13. It is to be remembered that the materials available as against a person accused of an offence under this Act prior to and during the stage of trial

can, in the eye of law, be construed as prima facie materials capable of proving the alleged commission of the offence during trial. After the stage of

trial, such materials get sanctified as evidence proving the commission of the offence by the offenders till their conviction and sentence are set aside

on appeal. In such state of affairs, it cannot be stated that there are reasonable grounds, at the stage of consideration of suspension of sentence

pending appeal, for coming to the conclusion that he is not guilty of the offence in respect of which he had been convicted and sentenced, leave

alone the other ground that he is not likely to commit any offence while on such bail.

14. The rationale as above, in my view, still holds good and in that view of the matter, there is no justification for suspension of the sentence as

imposed by the Court below on the petitioner herein ordering his release on bail, pending disposal of the appeal.

15. The petition, as such, deserves to be dismissed and the same is accordingly dismissed.

16. Petition dismissed.