

(2008) 08 CAL CK 0055
In the Calcutta High Court
Case No : C.R.R. No. 411 of 2008

Sanjay Kumar Kedia alias Sanjay Kedia APPELLANT
Vs
Intelligence Officer, Narcotic Control Bureau and Anr RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 439, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 24, 29, 30, 36A(4), 38

Citation : (2008) 08 CAL CK 0055

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Sekhar Kumar Basu, Amit Bhattacharjee, Jaymalya Bagchi, Abhijit Sarkar, Sabyasachi Banerjee, Rajdeep Mazumder, Ayan Bhattacharjee, Shubendu Sinha Roy, for the Appellant; Biswa Ranjan Ghoshal, Chandra Sekhar Bag, Ujjwal Dutta for the Narcotic Control Bureau, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.

The Judgment of the Court was as follows:

1. In the instant criminal revisional application the present petitioner challenged an order passed by the learned Additional Sessions Judge, 6th Court, Barasat, whereby the learned Judge rejected his application u/s 167(2) of the Code of Criminal Procedure, read with section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act and rejecting his prayer for bail relating to the offences punishable u/s 24/29/30/38 of the Narcotic Drugs and Psychotropic Substances Act.
2. At the very outset the learned Counsel, Sri Biswa Ranjan Ghoshal, appearing on behalf of the Narcotic Control Bureau, the opposite party No. 1 raised a preliminary objection and submitted this Court sitting singly has no determination to entertain this criminal revisional application. He draws the

attention of this Court to the prayer portion of this application and pointed out that a relief has been sought for release of the petitioner on bail. He further submitted since this Court sitting singly has no determination to consider a prayer for bail in connection with any offence which is punishable with an imprisonment exceeding seven years, thus the instant criminal revision cannot be entertained. He further submitted if this application succeeds then obviously that would lead to release of the petitioner on bail in connection with offences which is punishable with imprisonment exceeding seven years.

3. Mr. Joy Sengupta, learned Counsel, appearing on behalf of the State, also supports the submissions of Mr. Ghoshal and stressing the submissions of Mr. Ghoshal, referred and relied on two decisions, namely, one in the case of State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh and Others, and another in the case of State of West Bengal & Ors. vs. Sumer Jain, reported in 2003 C Cri, LR (Cal) 398, a decision of a Division Bench of this Court and also submitted, sitting singly, this Court cannot decide the issue.

4. However, Mr. Sekhar Kumar Basu, the learned Counsel, appearing on behalf of the petitioner, vehemently refuted the submissions of both Mr. Ghoshal and Mr. Sengupta. Mr. Basu submitted that this Court has every jurisdiction in exercise of its power u/s 482 of the Code of Criminal Procedure to see whether an order amounts to an abuse of process of Court or to adjudicate upon the legality, propriety and correctness of the same. He further submitted that he is not pressing the prayer for bail, on the contrary, he is inviting a decision on the question of legality and propriety of the impugned order. Thus, according to him, this Court has every jurisdiction to hear out this matter.

5. I have given my anxious and thoughtful consideration to the rival submissions of the parties. Since a preliminary objection has been raised as to the determination of this Court to entertain this criminal revisional application, I feel, as a matter of propriety, it would be necessary for this Court to first adjudicate the objection and then, to hear out the matter on merit.

6. This is a case where the petitioner who is an accused of the offences punishable u/s 24/29/30/38 of the Narcotic Drugs and Psychotropic Substances Act, moved an application before the learned Court below invoking section 167(2) of the Code of Criminal Procedure read with section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act and prayed for release on bail on the ground no complaint was filed either within the statutory period or within the extending period and such application being rejected, the petitioner challenged the said order in the instant criminal revision.

7. Whenever an accused is released on bail in terms of section 167(2) of the Code of Criminal Procedure read with section 36A(4) of the NDPS Act, for non-filing of the complaint within the statutory period of 180 days or within the extended period of 100 days, in terms of section 167(2) of the Code every person so released on bail under the said sub-section shall be deemed to be so

released under the provisions of Chapter XXXIII for the purpose of that chapter, meaning thereby all orders of granting bail u/s 167(2) of the Code of Criminal Procedure read with section 36A(4) of the NDPS Act would be an order under Chapter XXXIII of the Code of Criminal Procedure i.e. in case of the High Court an order of bail in exercise of power u/s 439 of the Code of Criminal Procedure.

8. In view of above, I am of the opinion, if, finally, this criminal revision succeeds before this Court, that would amount to granting of bail to the accused who has been arrayed as an accused relates to an offence where the sentence prescribed is rigorous imprisonment for 10 years, or more. Since, sitting singly, this Court has no determination to entertain any application for bail where the punishment prescribed exceeding 7 years, there is no scope to entertain this criminal revision.

9. No Court can and should not do anything indirectly which cannot be done directly.

10. For the reasons stated above, this matter stands released from my list and be placed before the Hon"ble Chief Justice for necessary order. The part-heard is treated as cancelled.