
(2001) 03 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 21738-M of 2000

Sanjeev Kumar @ Gurdeep Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(3)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 2, 37

Citation : (2001) 2 RCR(Criminal) 615

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Mr. Puneet Bali, for the Appellant; Mr. R.P.S. Athwal, DAG, for the Respondent

Judgement

Amar Dutt, J.—The petitioner was arrested on 19.7.1999 in case FIR No. 85 dated 19.7.1999 registered u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Police Station Boha, District Mansa. He applied for bail on 20.10.1999 saying that the statutory period of 90 days within which the challan ought to have been filed had expired. That application was dismissed by the Judge, Special Court, Mansa in view of the fact that the challan had already been presented afternoon on the same day. The Court relied upon the view expressed in Sanjay Dutt Vs. State through C.B.I., Bombay, and Balai Chander Datta v. State of Punjab 1998(1) RCR 603. The petitioner asserts this denial of his right on the ground that once after the expiry of statutory period of 90 days within which in the case under N.D.P.S. Act, the investigating agency was obliged to present the challan and application for bail is moved before filing of the challan the Court could not have denied him bail. On merits, the petitioner was seeking bail on the ground that the morphine of opium being 1.8% only. The article recovered from his client was not contraband and, therefore, his client did not violate any norms set down in the N.D.P.S. Act.

2. On behalf of the State, it was submitted that admittedly in this case on

20.10.99 the challan as well as the application for bail were filed in Court. In view of this, it could not by any stretch of imagination that on the day of filing of the bail application, the charge sheet had not been presented in the case and, therefore, the bail to the petitioner had rightly been rejected. The argument regarding the 1 Kg. of opium that alleged to have been recovered not containing the requisite amount of morphine was assailed on the ground that a perusal of the N.D.P.S. Act shows that in the case of opium there was no prescribed percentage of morphine which was required to be present.

3. I have carefully considered the respective submissions and I am of the view that in Sanjay Dutt's case (supra), the Apex Court came to the conclusion that the indefeasible right available to the accused u/s 167(2) Cr.P.C. gets extinguished after the filing of the challan and the petitioner cannot be released on bail. To the same extent are the observations contained in Union of India v. Thamisharasi 1995(2) RCR (SC) 531 and Dr. Bipan Shanti Lal Panchal v. State of Gujarat, 1996(1) RCR 506 (SC). In this case, the challan and the bail application were filed on the same day and apart from the assertions made by the learned counsel for the petitioner during the course of arguments that the bail application was filed in the earlier part of the day presumably with a view to assert that the bail application was filed later on. There is nothing on record which supports either contention. Since the Court before which the challan as well as bail application were filed is not obliged to pin-point exactly in hours and minutes when a particular application is filed nor there is any indication in this case as to when this was done, if the Court was to launch upon an inquiry regarding the point of time, it would have to be contended by observing that both the challan and the bail application were filed on the same day. In this view of the matter, it cannot be said that on the date when the application was filed, the charge sheet had not been presented and as such the petitioner's right to have his case dealt with u/s 167(2) Cr.P.C. still survived. The first argument consequently is to be rejected.

4. The second argument about the percentage of morphine in the opium having been found to be only 1.8%, therefore, the same does not fall within the definition given in Section 2(xv) of the N.D.P.S. Act too has to be rejected for the percentage of morphine required in clause (b) thereof is only 0.2%. Looked at from this angle, there is no merit in this application and the same has to be dismissed because the quantity of opium recovered is one kilogram and there is no circumstance available on record on the basis of which a satisfaction can be recorded at this stage that the petitioner has not committed the offence or that, if released on bail, he is not likely to commit any such offence. No ground for bail is made out.

Dismissed.

6. Petition dismissed.