

(2004) 10 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Criminal M.P. No. 208 Of 2004 in Cr. Appeal No. 24 Of 2004

Sher Singh alias Shera

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

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

Citation : (2005) JKJ 58 Supp

Hon'ble Judges : S.K.Gupta, J

Bench : Single Bench

Advocate : B.B.Kotwal, Aruna Thakur, Advocates appearing for the Parties

Judgement

1. Consequent upon the filing of appeal to impugn the correctness of the judgment and order dated 27.08.2004, propounded by the learned

Sessions Judge, Jammu, whereby the appellantpetitioner, Sher Singh, has been sentenced to undergo rigorous imprisonment for a term often years

and to pay a fine of Rs. 1.00 lac in proof of offence under section 21 of NDPS Act and in default of payment of fine, to suffer one year's

imprisonment, an application has also been preferred for the release of the convict on bail. It is urged that the petitionerappellant is an innocent

person and has not committed any offence. He has also undergone a long period in judicial custody during the currency of the trial and thus could

not manage a proper legal assistance to defend his case. He has old aged parents with no body at home to look after the family and that the

petitionerappellant has been falsely implicated in the case and his search and seizure has been manipulated for the sole purposes of his implication

in the case of Narcotics.

2. Despite notice, the State did not choose to file objections and offered to advance the arguments. Heard learned counsel appearing for the parties and considered the rival contentions in context with the material on record and the relevant provisions of law.

3. Mr. B. B. Kotwal, learned counsel appearing for the petitionerappellant, submits that the provisions of Sections 41 and 58 of the NDPS Act (hereinafter referred to as the Act.) would be applicable right from the investigation. It would be fallacious and pernicious to leave such question to be looked into during trial and not at the stage of bail application. According to Mr. Kotwal, the Act provides for its own machinery for investigation and the Act makes the provision with regard to arrest, search and seizure and also provides safe guards to the accused, which if ignored, would bring into peril the liberty of the citizen guaranteed under Article 21 of the Constitution. His further submission is that the petitionerappellant is entitled to rely upon such formalities even at the stage of bail.

4. Adverting to the factual matrix of the case, it is undisputedly gathered from the judgment of the trial Court that fifteen packets of Powder Heroine was recovered from the bag of the appellantpetitioner during search. The appellantpetitioner was charged for offence under section 21 of the NDPS Act by the trial Court in FIR No. 4/1996 and after recording evidence and on conclusion of the trial, the appellantpetitioner was convicted and sentenced to undergo ten years rigorous imprisonment and a fine of Rs. 1.00 lac. There is no denying the fact that problem of drug addiction as well as drug trafficking has become a global phenomenon. Drug lords have almost broken out a war against the efforts to check the menace. Drug consumption is playing havoc with the public health, more particularly with the youth who are easily allured within its embrace. The mushrooming of the vice infact compelled the Government for the enactment of stringent laws to curb and crack narco imperialism.

5. As regards the contention raised by Mr. Kotwal with regard to the nonobservance of the mandatory provisions of Sections 41 and 58 of the Act during investigation by the police, which leads a serious dent in the prosecution of the case, it is pertinent to point out that all these aspects of the matter have been taken into consideration by the trial Court and stood rejected, while recording conviction and consequent sentence under

Section 21 of the Act against the appellantpetitioner. It may not be proper and just for this Court to make any final comment either way on the

above contention, for the purposes of disposal of the bail application. It is suffice to state that, in the circumstances of the case, appellantpetitioner

does not deserve his release on bail in considering the man date under Section 37 of the Act. There can be no dispute with regard to the principles

laid down by the Apex Court and cited by Mr. B.B. Kotwal to buttress his argument, but their applicability depends upon the facts of each case.

6. Keeping in view the larger interest of the society and having regard to the gravity of the offence, quantum of sentence recorded after holding him

guilty and restricted power of bail in view of Section 37 of the NDPS Act, I am not inclined to grant bail to the appellantpetitioner. The application

is without any legal force and is accordingly dismissed.