
(2020) 09 MP CK 0170
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 6337 Of 2019

Shivraj Singh & Ors.

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389(1)
Indian Penal Code, 1860 — Section 34, 302

Citation : (2020) 09 MP CK 0170

Hon'ble Judges : Sheel Nagu, J;S. A. Dharmadhikari, J

Bench : Division Bench

Advocate : Dharendra Singh Niranjana, Vijay Sundaram

Judgement

Crime No.

Under Section

Police Station

32/2017

8/15, 25, 29 of NDPS Act

Narcotic cell Indore District Mandsaur

1. As declared by the petitioner, this is the first bail application under Section 438 of Cr.P.C.

2. It is the case of the prosecution that on 17.11.2017, after receiving secret information the police stopped and searched Maruti Omni van bearing registration No. RJ 09 UA 6922 and recovered 105 Kg illegal poppy straw. Co-accused Nandlal was driving the vehicle. He was taken into custody and the case was registered.

3. It was found during investigation that the petitioner was the registered owner of the vehicle, but he did not surrender, hid himself, and could not be arrested

for the next three years. In the meantime, the police declared him absconding and filed the charge sheet against the co-accused.

4. The bail is pleaded by the petitioner primarily on three grounds:-

(i) The petitioner was not aware of registration of the offence.

(ii) He never absconded. During the entire period, he was residing in his village. The police never visited his house, prepared any Farari Panchnama or declared him absconding in any other lawful manner.

(iii) Much prior to the incident dated 17.11.2017, the petitioner had sold his vehicle to Nandlal (main accused) by a notarized sale agreement dated 27.4.2017 and this has been admitted by Nandlal in his confession made before the police and recorded under Section 27 of the Evidence Act wherein he has admitted that he was the owner of the vehicle and was plying the same on hire.

5. Learned counsel for the petitioner placed reliance on the judgments reported in 1995 CRI.L.J.1762 (Orissa HC) Balbir Singh Vs. State of Orissa, 1999 CRI.L.J 2564 (AP HC) Smt. Anima Prava Roy Vs. State of Andhra Pradesh, 2002 CRI.L.J 201 (P&H) Gurmail Singh Vs. State of Punjab and order dated 8.8.2013 passed in MCRC.No.4057/2013 (Shahnawaz @ Shanu Vs. State of M.P.).

6. Per contra, learned panel lawyer has opposed the petition stating that when all the attempts of arresting the petitioner had gone in vain, the police filed a charge sheet against the co-accused. Even after filing of the Charge-sheet, the petitioner remained underground and could not be arrested even after several attempts made by the police. A large commercial quantity has been recovered from the vehicle under ownership of the petitioner. The sale agreement is not a valid document to sell the vehicle. The agreement relied upon by the petitioner, never came to light during the entire investigation. Nandlal never revealed that he had purchased the vehicle from the petitioner. His statement made before the police cannot be read out of context.

7. In the past three years, Nandlal never referred or disclosed the existence of any such agreement. Such type of documents can be easily fabricated by anyone. The police never got an opportunity to verify the agreement now being referred to by the petitioner. It is necessary to give an opportunity to the police to investigate the matter in respect of the ground taken by the petitioner, otherwise it may frustrate the law which has been introduced to curb the menace of such heinous crimes.

8. Learned panel lawyer referred to the presumption available against the petitioner under Section 35 and 54 of the NDPS Act. Stating that, at this stage it cannot be assumed that the petitioner was neither owner of the vehicle nor was the contraband being transported without his knowledge. Therefore, it is prayed that the bail be not granted to the petitioner.

9. The fact that the petitioner is registered owner of the vehicle which was found

involved in transporting commercial quantity of the contraband is not disputed.

10. The conclusions of the judgments of Andhra and Punjab and Haryana High Courts in the cases of Smt. Anima Prabha Roy and Gurmail Singh (supra) are the final outcome of the trial. In the order dated 8.8.2013 passed by the Court in Shahnawaz @ Shanu case (supra) permitted contraband was being transported and the case was registered only on the basis of discrepancy in inter se quantity of grind and un-grind poppy straw.

11. Similarly, the case of Balbir Singh (supra) is related to the stage where after getting full opportunity to investigate the case, the police filed the charge-sheet and after examining all the material placed before it, the Court arrived at a conclusion that no prima facie case is made out, but in the present case, that stage is yet to come.

12. Considering the fact that the petitioner was registered owner of the vehicle, he was absconding since the past three years and has never cooperated with the investigation, the grounds pleaded by the learned counsel for the petitioner do not persuade me to grant the relief claimed by the petitioner, therefore, the petition is dismissed.