

(1993) 08 GAU CK 0015

In the Gauhati High Court

Case No : Criminal Miscellaneous Original (B) Application No. 28 of 1993

Shri Takhelmayum Ibochou Singh

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

Date of Decision : 12-08-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 16, 17, 18, 19

Citation : (1994) CriLJ 3324

Hon'ble Judges : H.K. Homchaudhury, J

Bench : Single Bench

Advocate : R.S. Raisang and Y. Okendra Singh, for the Appellant; A. Jagatchandra Singh, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

H.K. Homchaudhury, J.—Apprehending arrest in connection with FIR No. 29(6) 93 of Ukhrul P.S. under Sections 20(b)(i) and Section 60(3) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as No. ND & PS Act), the petitioner has approached this Court on 17th July, 1993 in this petition u/s 438, Cr.P.C. for grant of anticipatory bail. On 19-7-93 notice was issued to the State and the learned Public Prosecutor accepted the notice. An interim order was passed on 19-7-93 to the effect that in the event of arrest of the petitioner he should be allowed to go on interim bail on furnishing a bail bond of Rs. 5,000/- to the satisfaction of the arresting authority. It is submitted by the learned counsel for the petitioner that petitioner has already been enlarged on interim bail as ordered by the Court on 19-7-93. Interim order on 19-7-93 was passed because of the fact that the petitioner was not named as accused in the FIR. Learned Public Prosecutor has produced the case diary which discloses prima facie case to implicate the petitioner in the case.:

2. I have heard Mr. R.S. Raisang, learned counsel for the petitioner and Mr. A.

Jagatchandra Singh, learned Public Prosecutor, Manipur.

3. Learned Public Prosecutor has submitted that power to grant bail to the petitioner accused of committing offence u/s 20(b)(i) of the ND & PS Act is subject to the limitation contained in Section 37 of the ND & PS Act and as such, bail cannot be granted unless the Court is satisfied that there are reasonable grounds to believe that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail. In support of the contention learned Public Prosecutor placed reliance on a decision of the Supreme Court in the case of Narcotics Control Bureau Vs. Kishan Lal and others, wherein the Hon'ble Supreme Court has held that restrictions placed on the powers of the Court under the amended Section 37 of the ND & PS Act are applicable on the High Court also in the matter of granting bail.

4. Learned counsel for the petitioner, on the other hand, has submitted that punishment prescribed for commission of offence under 20(b)(i) of the ND & PS Act being imprisonment for a term less than five years provisions of Section 37 of the ND & PS Act is not attracted in the instant case and the petitioner is entitled to be enlarged on bail. In support of the contention learned counsel for the petitioner has placed reliance on a decision of the single Bench of the Karnataka High Court in the case of A.V. Dharmasingh and others Vs. The State of Karnataka,

5. Learned Public Prosecutor on the other hand has placed reliance on the decision of a single Bench of the Orissa High Court in the case of Rajendra Panda and Another etc. Vs. State of Orissa, and has submitted that in respect of cases registered for offence committed u/s 30(b)(i) of the ND & PS Act provisions of Section 37 of the Act is attracted.

6. The controversy centres round the question as to whether the provision of Section 37 of the ND & PS Act which provides that where a person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall not be released on bail or on his own bond, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, is applicable in the cases covered by Section 20(b)(i) of the ND & PS Act.

7. To appreciate the rival contentions it is appropriate to have a look into the relevant part of Section 20 and 37 of the ND & PS Act.

Section 20(b)(i).

20. Punishment for contravention in relation to cannabis plant and cannabis --
Whoever, in contravention of any provision of this Act or any rule or order made on condition of licence granted thereunder--

(a) xx xx xx xx (b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable--

(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) xx xx xx xx "

Section 37(b)(ii)-

37. Offences to be cognizable and non-bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) xx xx xx xx (b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless-

(i) xx xx xx xx (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In the case of A.V. Dharmasingh (supra), the single Judge of the Karnataka High Court has taken the view that the expression "punishable for a term of imprisonment for five years or more" occurring in Clause (b) of Section 37(1) of the Act means that the offence should be punishable with imprisonment for a minimum term of 5 years or more. In the case of Rajasthan Panda (supra), a single Bench of the Orissa High Court in para 7 of the Judgment on the other hand has held :

The language used in Section 37(b) is clear to the effect that offences which carry punishment of five years or more are covered by it. There is nothing in the language of the statute to infer that the sentence intended was minimum limit, and not maximum limit. The language being clear and unambiguous there is no scope for taking a different view. In that view of the matter, it would be unreasonable to accept interpretation put by learned counsel for petitioners. In view of clear language of Section 37(b), offences covered by Section 20(b)(i) come within the ambit of the former provision. In other words, any person who is alleged to have committed an offence in terms of Section 20(b)(i), is not to be granted bail unless court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence, and that he is not likely to commit any offence while on bail.

8. Chapter IV of the ND & PS Act contains different kinds of offences and penalties under the provisions of the ND & PS Act. Punishment prescribed for the offences committed under Sections 15, 16, 17, 18, 19, 20(ii), 21, 22, 23, 24, 25, 27A is imprisonment for a term not less than 10 years which may extend to 20 years. Punishment prescribed u/s 27 is less than 5 years. u/s 28 of the ND & PS Act whoever attempts to commit any offence punishable under Chapter IV or to cause such offence to be committed and in such attempt does any act towards

the commission of the offence shall be punishable with the punishment provided for the offence. Similar punishment is prescribed u/s 29 for abetment and criminal conspiracy. Enhanced punishment and death penalty is also provided under Sections 31, 31A of the ND & PS Act. From the provision of various sections from Sections 15 to 31 of the ND& PS Act under Chapter IV, it is clear that legislature wherever felt necessary prescribed minimum terms of imprisonment.

9. It is also apparent that object is to make stringent provision for the control and regulation of operation relating to Narcotic Drugs and Psychotropic Substances. As regards the quantum of punishment prescribed under the provision of Section 20(b)(i) of the ND & PS Act, it is clear that a person committing offence under that Section is liable to be sentenced to undergo rigorous imprisonment for a term which may extend to 5 years - which means rigorous imprisonment for a term of 5 years can be inflicted for commission of the offence u/s 20(b)(i) of the ND & PS Act. The provision of Section 20(b)(i) prescribing quantum of punishment being clear and unambiguous there is no scope of giving different meaning. If the legislature intended to place restriction on the powers of the Court in respect of granting bail only in cases where a person is accused of committing offence punishable with imprisonment for a minimum term of 5 years or more, the intendment would have found expression in the Section 37 itself.

10. In respectful agreement with the reasoning contained in the judgment of the Orissa High Court in the case of Rajendra Panda (*supra*), I hold that provision of Section 37 of the ND & PS Act is attracted in the case u/s 20(b)(i) of the said Act. In other words, power to grant bail to a person accused of committing offence u/s 20(b)(i) of the ND & PS Act is subject to the restrictions contained in Section 37 of the said Act.

11. In the instant case, while issuing notice, interim order was passed because of the fact that petitioner was not named as accused in the FIR. Since the case diary discloses that there is a *prima facie* case of involvement of the petitioner in the FIR No. 29(6)93 Ukhul P.S. under Sections 20(b)(i) and 60(3) of the ND & PS Act, the powers of the High Court to grant bail being subject to the restriction contained in Section 37 of the ND & PS Act, there is no scope to grant of anticipatory bail to the petitioner in the exercise of power u/s 438, Cr.P.C.

12. For the reasons stated above, petition for grant of anticipatory bail is rejected. The interim bail granted to the petitioner as per order dated 19-7-93 passed by this Court comes to an end with the rejection of this petition.