

(2012) 07 KAR CK 0057
In the Karnataka High Court
Case No : Criminal Petition No. 3183 of 2012

Sri. Naseer Ahmed

APPELLANT

Vs

Superintendent of Customs, Air Intelligence Unit, BIAL,
Bangalore

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167 (2)
Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 36 A, 36 A
(4)

Citation : (2012) 6 KarLJ 701

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : K.S. Vishwanath, for the Appellant; Urval N. Ramanand and C.G.
Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan

1. Application filed by the petitioner seeking statutory bail u/s 167(2) of Cr. P.C. was dismissed by the Spl. Court for N.D.P.S. and hence, this petition is by the accused. The case of the prosecution in short is that, on 19.03.2012 at about 21.50 hours at Bangalore International Airport, the petitioner was arrested as he was found in possession of six bundles of heroin weighing in all 350 gms. He was remanded to judicial custody and thereafter, the petitioner moved the application u/s 167(2) of Cr. P.C. seeking bail on the ground that within 60 days period, the prosecution did not file any final report, and therefore, he is entitled to the grant of bail. Learned Judge of the Special Court rejected the application and took the view that the seized quantity was coming within the commercial quantity and therefore, bail cannot be granted in view of Section 36-A(4) of the N.D.P.S. Act which prescribes limitation of 180 days for submitting the final report and as such, application was premature in nature.

2. I have heard Sri. K.S. Vishwanath, learned Counsel for the petitioner and Sri. Urval N. Ramanand, learned senior counsel and Spl. P.P. for the respondent and perused the judgments cited by both sides.

3. Petitioner's counsel argued at great length and relied on several decisions to contend that quantity seized was not coming within the commercial quantity and at the preliminary stage, no FSL report was filed by the authorities concerned and therefore, as of right, the petitioner is entitled for bail. The main contention put forward is that, it is not the quantity of the drug that seized i.e., material, but the purity of the drug will have to be taken into consideration and in this connection, reliance is placed on the Apex Court's decisions reported in 2009 AIR SCW 1621 as well as (2008) 16 SCC 471. It is therefore argued that even if the FSL report is taken into consideration, the percentage of Diacetyl morphine in the samples taken together will not be more than 60 gms and therefore, quantity of the drug comes below the commercial quantity but above the small quantity and thus, falls within the intermediate category. As such, the petitioner is entitled for bail and even though the petitioner is a foreigner, there can be no apprehension of fleeing from justice because the passport can always be seized which will prevent the petitioner going away from the reach of the court.

4. Learned Senior counsel for the respondent-Customs Authority argued by relying on the Notification dated 18.11.2009 that when the said Notification coming into operation and Note No. 4 being inserted to the table to the Act, what is material is the entire mixture and not the pure drug content. As such, the quantity seized being 350 gms, which is a mixture by virtue of the said Notification, question of the quantity falling below the commercial quantity does not arise. The aforesaid Notification it is further submitted was also considered by the Apex Court in the case of Harjit Singh Vs. State of Punjab, and therefore, the petitioner is not entitled for bail as the limitation period is 180 days as per Section 36-A of the N.D.P.S. Act r/w Section 167(2) of the Cr. P.C. Therefore, the bail application itself is premature in nature.

5. Having thus heard both sides and in the light of the Notification referred to by learned Counsel for the respondent and learned Counsel for the petitioner also not disputing that what was seized was a mixture of several substances as is clear from the definition of "manufactured drug", the period of limitation is 180 days and not 60 days. The Notification itself has to be taken note of at this juncture and it reads as under:-

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 18th November, 2009

S.O. 2941(E) - In exercise of the powers conferred by clause (vii a) and (xxiii a) of Section 2 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of

1985) the Central Government, hereby makes the following amendment in the Notification S.O. 1055(E), dated 19th October, 2001 namely:-

In the Table at the end after Note 3, the following Note shall be inserted, namely:-

(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.

6. The Apex Court in the case of Harjith Singh vs. State of Punjab referred to above, also took note of the aforesaid Notification and held that the said Notification cannot have any retrospective effect. However, the Notification as such was not held to be not applicable. In the light of the aforesaid decision of the Apex Court, in the case on hand, the application filed for grant of bail u/s 167(2) of Cr. P.C. itself is premature in nature and the period of limitation is 180 days. This also the view taken by this Court in the decision reported in 2011(1) AIR KAR 505. For the aforesaid reasons, petition is dismissed as the trial court has rightly held that it was premature in nature.