

(2001) 04 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No. 445 of 2001

State of Maharashtra

APPELLANT

Vs

Ganpatrao Mahadeo Karne

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)

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

Citation : (2001) ALLMR(Cri) 1682 : (2001) CriLJ 3192

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : A.G. Mujumdar, app, for the Appellant; Shyam Dewani, for the Respondent

Judgement

R.K. Batta, J.—This is an application for cancellation of bail granted by the Special Judge, NDPS, Nagpur on 5-1-2000.

2. Learned APP took me through the record of the Special Criminal Case No. 252 of 1999 and urged before me that the trial Court in spite of bar u/s 37 of the Narcotic Drugs and Psychotropic Substances Act (for short, the "NDPS Act") has granted bail which is illegal and arbitrary and as such, the bail granted to the respondent is required to be cancelled. It was also pointed out that besides the case under consideration, the applicant is involved in three other serious crimes. It was also pointed out by him that neither before the lower Court nor in reply before this Court, the respondent had taken stand that the house in question does not belong to him and in such circumstances, the findings of the Special Judge on this aspect are totally unfounded and illegal. He, therefore, contends that the bail granted be cancelled.

3. Learned Advocate for applicant referred to various timings recorded in the papers in the charge-sheet and urged that it is not understood as to how the police party had started for the raid in question at 9.00 a.m. and that there are discrepancies relating to the timings on account of which the entire prosecution

case appears to be doubtful. According to him, the applicant has been falsely implicated and there is no case made out for cancellation of bail.

4. What has primarily weighed with the Special Judge, Nagpur is that the pancha witnesses of recovery have filed affidavits in the Court that no recovery was made in their presence and their signatures were obtained on some papers. Learned Advocate for the applicant stated that the said panchas had suo motu filed the affidavits which submission is, in fact, contrary to the record since the record (Exhibit 4) at page 43 of Special Criminal Case No. 52 of 1999 shows that it is the accused who had filed affidavits of the pancha witnesses. In my opinion, even if the witnesses themselves filed affidavits, it would not make any difference. Filing of the affidavit is nothing but tampering of the prosecution evidence and the Special Judge should have taken serious view of the matter. However, he placed reliance on the affidavits and enlarged the respondents on bail. It is a matter of common knowledge that practically in all sessions trials, witnesses are won over. Now, a dangerous trend has started and that is, tampering of evidence even before the trial commences. This dangerous trend has to be nipped in the bud at the earliest so that it does not gain enormous proportions affecting the criminal justice system which has become a casualty. This ground of tampering with the evidence, in my opinion, is by itself sufficient to cancel the bail granted to the respondent.

5. It is now well settled that where the bail is illegally and arbitrarily granted, the same is liable to be cancelled. In *Gurumurti Digal Vs. Ashok Kumar Digal and Another*, it has been pointed out that it is well settled that if the High Court comes to the conclusion that the bail has been granted to an accused by lower Court in a manner which smacks of arbitrariness or perversity on its part, the High Court has a duty to cancel the bail and to order arrest of the accused in exercise of Sub-section (2) of Section 439, Cr.P.C. There are also number of other judgments on this aspect and it is not necessary to refer to them.

6. On merits of the case also, there was absolutely no case for grant of bail in view of the prohibition contained in Section 37 of the NDPS Act. The papers annexed along with the charge-sheet show recovery of 135 gms of charas from the house of respondent. In the bail application filed by the applicant on 29-12-1999 before the Special Judge, no stand was taken by the respondent that the house did not belong to him. In the absence of the same, it is not understood as to how the Special Judge on his own went into this aspect and came to the conclusion that the house did not belong to the applicant. The order of grant of bail is glaringly perverse and against the provision of law contained u/s 37 of the NDPS Act.

7. In view of the same, the bail granted to the applicant by Special Judge vide order dated 5-1-2000 is hereby cancelled. The police shall take the respondent into custody immediately. Application is allowed in the aforesaid terms.

8. By order dated 11-1-2001 at the time of admission of the matter, it was

observed that the matter pertains to cancellation of bail and as such, it be listed for hearing on merits on 25-1-2001 and no adjournment shall be granted. However, it appears that though the matter was listed on 25-1-2001, but it did not reach and thereafter this urgent matter was not at all put up till circulation was sought by the learned A.P.P. which was granted for 9-4-2001. It is, therefore, considered necessary that Additional Registrar should conduct enquiry as to why this matter was not listed before the Court after 25-1-2001 till its circulation was sought and granted for 9-4-2001. The enquiry shall be conducted within fifteen days and the enquiry report shall be placed before the Court.