

(2004) 02 CAL CK 0060
In the Calcutta High Court
Case No : C.R.R. No. 148 of 2004

Subrata Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2004) 2 CHN 331

Hon'ble Judges : P.N. Sinha, J

Bench : Single Bench

Advocate : Swapan Kumar Mallick, for the Appellant; S.S. Roy and Kalyan Mitra, for the Respondent

Final Decision : Allowed

Judgement

1. This revisional application u/s 397 read with Section 482 of Cr. P. C. has been filed by the accused petitioner praying for quashing the criminal proceeding being case No. N-19/96 now pending before the learned Additional Sessions Judge, 6th Court (Judge, N.D.P.S. Act), Barasat.

2. Learned advocate for the petitioner contended that in connection with the abovestated case the petitioner was brought under arrest before the learned Judge on 24.2.96 for his alleged possession of "Ganja" whose gross weight including the papers found was 38.800 miligram and excluding the paper packets the weight of the "Ganja" found in possession of the petitioner was 33.800 miligram. After statutory period of detention of 60 days he was enlarged on bail but as he did not appear after submission of chargesheet warrant was issued against him and he surrendered before the learned Judge on 16.6.03. On 17.9.03 charge u/s 20(a) of N.D.P.S. Act (hereinafter called the "Act") was framed. Thereafter, several dates passed but the trial could not be started and the next date is 9.2.2004 for S.T.D., that means, setting trial date.

3. He contended that punishment u/s 20(a) of the Act is six months or with fine or with both. As the trial has not been started even after expiry of six months detention of the accused petitioner, his further detention is illegal as he has already been in custody for more than the prescribed period of punishment. On 20.12.03 two petitions were filed; one praying for granting bail and the other for accepting his plea of guilt but, the learned Judge rejected both the petitions. At present the petitioner is in custody for about nine months, whereas the punishment prescribed u/s 20(a) of the Act is imprisonment for six months or with fine or with both. The petitioner has already served out prescribed period of sentence and his further detention is illegal and is violative of his right under Article 21 of the Constitution. When the petitioner has already served out the prescribed period of sentence he should be released forthwith and the proceeding should be quashed. It would be an abuse of process of Court to continue the said criminal proceeding further. In support of his contention he placed a decision reported in 2003(4) Crimes 478.

4. Learned Advocate appearing for the State submitted that the stand of the accused petitioner is not certain. When the charge was framed the accused petitioner pleaded not guilty and claimed to be tried but, subsequently on 20.6.03 he filed a petition requesting the learned Judge to accept his plea of guilt. As the contention and stand of the accused petitioner is conflicting learned Judge rightly did not accept the petition of accused filed subsequently to accept his plea of guilt. The petitioner cannot now claim that he has been detained illegally and if he claims so the petitioner should file habeas corpus application under Article 226 of the Constitution.

5. I have considered the submissions of the learned Advocates of the parties and perused the materials on record. In the revisional application it has been contended that Ashok Roy, I.O. of Khardah Police Station lodged the information alleging that on 24.2.96 at 9.00 hrs. receiving information of source that one person was selling "Ganja" to customers at Bistu Bhadu More, Khardah the complainant with other officers reached there and apprehended this petitioner. After observing necessary formalities and on being search 25 packets of "Ganja" were found in his possession and the weight of the said "Ganja" in packets was 38.800 miligram and excluding the paper packets the weight of the "Ganja" found in possession of petitioner was 33.800 miligram. On the basis of the said information Khardah P.S. Case No. 96 dated 24.4.96 u/s 20 of the Act was started against the petitioner. As the chargesheet was not submitted within statutory period of 60 days the petitioner was enlarged on bail.

6. Subsequently, chargesheet was submitted and as accused did not appear after submission of chargesheet warrant was issued against him. The petitioner surrendered before the learned Judge on 10.6.03 and since then he is in custody. It appears that charge u/s 20(a) of the Act has been framed against the petitioner on 17.9.03. When the charge was read over and explained to petitioner he pleaded not guilty and claimed to be tried. Since then the petitioner

is in custody but, not a single witness has been examined so far. On 20.12.03 the petitioner filed two applications; one for praying bail and the other for accepting his plea of guilt. The certified copy of the order dated 20.12.03 passed by the learned Judge reveals that he rejected both the applications. Thereafter, the petitioner has moved this Court for quashing the proceeding.

7. It appears that the contention of the petitioner is that the punishment prescribed u/s 20(a) of the Act is imprisonment for six months or with fine which may extend to 10,000/- rupees or with both. It has been contended that previously he was in custody for two months before submission of chargesheet and after submission of chargesheet he is in custody since 10.6.03, and thus, he is in custody in all for about nine months which is exceeding the maximum period of punishment provided u/s 20(a) of the Act. Here I intend to reproduce Section 20 of the Act:

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

(a) cultivates any cannabis plant; or

(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 Clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to Sub-clause (b),-

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to 6 months, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;"

8. It is clear, therefore, that if anyone contravenes any provision of the Act and where such contravention relates to Sub-clause (b) the punishment would be (A) if it involves small quantity with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees or with both. In this case, there is no dispute that the seized "Ganja" is a small quantity. The definition of small quantity is found in the table given in annexure to the Act. Serial No. 55 refers to "Ganja" and small quantity is prescribed in the table is 1000 gm. = 1.00 kg. and the commercial quantity has been defined as 20 kgs. in the same table. In this case the amount of "Ganja" which was recovered from possession of this petitioner was 33.800 miligram excluding packet and including packet 38.800 miligram. Therefore, it is undisputed that the

amount of "Ganja" which was recovered from the possession of this petitioner comes within the definition of small quantity. Considering that small quantity of "Ganja" was found in his possession, the maximum sentence that can be awarded to the accused petitioner, if he is found guilty would be rigorous imprisonment for six months or with fine which may extend to Rs. 10,000/- or with both.

9. I am of opinion that the views expressed by the learned Advocate for the State cannot be accepted when it is clear that after submission of chargesheet he is in custody since 10.6.03 till date which is exceeding six months. If his custody before chargesheet is considered, two more months are to be added with it as he was given bail after statutory detention of 60 days. The trial has not yet started though charge was framed. Not a single witness has been examined and it would take at least six months to one year to complete the trial and by that time the accused if held guilty would remain in custody exceeding one year and six months whereas the accused, if found guilty in this case cannot be convicted and sentenced to suffer imprisonment for more than six months.

10. In my opinion there is no ground to reject the contention of Mr. Mallick, learned Advocate for petitioner. Admittedly, only 33.800 miligram "Ganja" was found in possession of this petitioner which is very small quantity and considering the fact that the petitioner is in custody for over seven months since he surrendered after chargesheet on 10.6.03 and in total for over nine months including the previous two months detention during remand period, any further detention of the petitioner would be clearly violative of Article 21 of the Constitution.

11. Considering the entire matter and without entering into detailed technicalities I am of opinion that it is one of such exceptional cases where this Court can exercise its inherent jurisdiction u/s 482 of Cr. P. C. to quash the impugned criminal proceeding. In this connection decision namely Anil Das v. State, reported in 2003(4) Crimes 478, referred to by the learned Advocate for the petitioner is quite appropriate in the instant case. In the said reported case the accused was found in possession of 1.5 kgs. of "Ganga" and the High Court held that it was a small quantity and the High Court observed that where accused was found in possession of "Ganja" in small quantity and had been in jail for 9 months which was more than the sentence provided for the offence under the Act, proceedings were liable to be dropped and accused to be set free forthwith.

12. In the instant case also the accused was found in possession of "Ganja" which is very small quantity and he is in jail custody for about nine months and trial has not yet been started and his custody for about nine months is more than the sentence provided for the offence under the Act and as such exercising inherent powers vested under Cr. P. C. the criminal proceeding is liable to be quashed. Accordingly, the revisional application succeeds and it is disposed of directing that the petitioner be released forthwith and the criminal proceeding being Case No. N-19/96 now pending in the Court of the learned Additional

Sessions Judge, 6th Court (Judge, N.D.P.S. Act), Barasat be dropped and since the petitioner has been in custody for nearly nine months which is more than the maximum period fixed under the Act (six months), the petitioner shall be set at liberty forthwith.

13. Criminal Section is directed to send copy of this order to the learned Additional Sessions Judge, 6th Court (Judge, N.D.P.S. Act), Barasat forthwith for information and necessary action.

14. Urgent certified copy be given to the parties, if applied for, expeditiously.

P.N. Sinha, J.