
(2001) 02 RAJ CK 0039

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 6205 of 2000

Sudarshan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 37, 50, 8

Citation : (2001) 4 WLN 5

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The petitioner is facing trial in a case registered u/s 8/21 of the N.D.P.S. Act. It has been canvassed on behalf of the petitioner that the search conducted by the Executive Magistrate was legally untenable in as much as the Executive Magistrate was part of the raid party as is apparent from the FIR. It was further contended that mandatory provisions of Section 50 of the N.D.P.S. Act were flouted and the petitioner is entitled to be released on bail. Reliance was placed on Vishnu Prasad v. State 2000 (2) RCC 1288 Nadeem v. State 1998 (2) EFR 632 and Kishan Lal v. Central Bureau 1999 (1) RCC 674.

2. I have heard learned Public Prosecutor u/s 37 of the NDPS Act.

3. In none of the cases cited before me by Mr. Jagdeep Dhankar, learned Senior Advocate, the search was conducted by or in the presence of the Magistrate. The search in all these cases was made by the Gazetted Police Officers who were part of the raid party and under those circumstances the accused were ordered to be released on bail.

4. I am unable to persuade myself to draw presumption at this stage against the Executive Magistrate in the instant case that he was having any interest in the success of investigation. Even their Lordships of the Supreme Court attached much importance to the testimony of the Magistrate. In Ashok Kumar Vs. State

of Haryana, the accused was searched in the presence of Tehsildar-cum-Executive Magistrate. Placing reliance on the testimony of the Magistrate their lordships observed in para 4 thus--

What is contended by the learned Counsel for the appellant is that no independent witness was kept present while the appellant was searched. But that circumstances can not create any doubt as the appellant was searched in the presence of a Magistrate...

5. I find no merit in the bail petition it is accordingly dismissed.