

(2019) 06 GUJ CK 0073
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 2896 Of 2019

Suhail Ahmad S/O Manjur Ahmad

APPELLANT

Vs

Narcotics Control Bureau, Zonal Unit Ahmedabad

RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 19, 20(b)(ii)
(C), 24, 25, 27A, 28, 29, 30, 37, 67

Citation : (2019) 06 GUJ CK 0073

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Nitin T Gandhi, Rohankumar, Khitij Amin, L B Dabh

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for releasing the applicant on regular bail in connection

with FIR being F.No.NCB/AZU/CRA06/2018 registered with NCB, Ahmedabad for the offence under Sections 8(c), 20(b)(ii)(C), 25, 28, 30 read

with Section 29 of NDPS Act.

2. Heard learned advocate Mr. Nitin T. Gandhi appearing for the applicant, Mr. Khitij Amin, learned advocate for the respondent No.1 and learned

Additional Public Prosecutor Mr. L.B. Dabhi, for the respondent No.2. State.

3. Learned advocate for the applicant mainly contended that as per the case of the prosecution, applicant was found in the truck with truck driver,

but in fact, applicant is a cleaner and the contraband article i.e. Charas was found from the conscious possession of the truck driver and not from the

possession of the present applicant. It is further contended that even after the arrest of the applicant, during the course of investigation, no prohibited

article is found from the house of the applicant and therefore, merely because the applicant was present in the truck, he cannot be kept in prison till the

trial is over. Learned counsel appearing for the applicant placed reliance upon the following decisions :Â?

(1) Judgment in case of Nazar Mohammad Versus State of Punjab, reported in 2016(2) R.C.R. (Criminal) 172;

(2) Judgment in case of Gulsan Kumar Versus State of Punjab, reported in Criminal Misc. Application No.23728 of 2018;

Â (3) Judgment in case of Love Kumar Versus State of Punjab, reported in Criminal Misc. Application No.45325 of 2018.

4. Learned counsel has also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Ram Singh Versus Central Bureau of

Narcotics reported in 2011 AIR (SC) 2490.

5. On the other hand, learned counsel Mr. Amin appearing for the respondent No.1 opposed this application and referred to the statement of the coÂ?

accused, Mushtaq Ahmad, which was recorded under Section 67 of the NDPS Act. Learned counsel has also referred to the statement of the present

applicant which was also recorded under Section 67 of the NDPS Act. From the aforesaid material, it is contended that the applicant was aware

about the fact that the coÂaccused was having contraband material i.e. 10Kgs. charas which was to be delivered at Ahmedabad and for the said

purpose, an amount of Rs.10,000/Â? was given to the applicant. It is also contended that the said statement is not retracted by the applicant.

6. It is further submitted that 10 Kg. Charas is seized in the incident in question, which is more than commercial quantity prescribed under the

provision of the NDPS Act and Notification issued under the said Act.

7. Learned counsel has also referred to Sections 29 and 30 of the NDPS Act and thereafter, contended that there is a primaÂfacie material against

the applicant and therefore, this Court may not entertain this application.

8. Learned Additional Public Prosecutor Mr. Dabhi has also supported the submissions canvassed by learned counsel Mr. Amin appearing for the respondent No.1.

9. Having heard the learned advocates appearing for the parties and having gone

through the material produced on record, it is revealed that the applicant was found in the truck with the co-accused i.e. Mushtaq Ahmad and from the said truck, 10 Kgs. charas was found. From the statement recorded under Section 67 of the NDPS Act, it is revealed that the applicant was aware about the fact that the said contraband material was to be delivered at Ahmedabad for which Rs.10,000/- was to be paid to the present applicant. It is also not in dispute that the contraband article which was seized from the truck, is more than commercial quantity therefore, provisions contained in Section 37 of the NDPS Act would be attracted.

10. Section 37 of the NDPS Act provides as under, 37. Offences to be cognizable and non-cognizable.

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

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving

commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(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.

(2) The limitations on granting of bail specified in clause (b) of sub-section

(1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of

bail].

11. The decision rendered by the Hon'ble Supreme Court upon which the reliance is placed by learned advocate Mr. Gandhi appearing for the

applicant would not be applicable in the facts of the present case.

In the said case, after conclusion of the trial, the concerned appellant was convicted and his conviction was also continued which was challenged

before the Hon'ble Supreme Court and the Hon'ble Supreme Court has made certain observations after considering the evidence which was produced

before the concerned trial Court.

12. Even the orders passed by the Punjab and Haryana High Court upon which the reliance is placed by learned advocate Mr. Gandhi are also not applicable in the facts of the present case.

13. From the material placed before this Court, it is revealed that there is a prima facie case against the applicant. Therefore, looking to the nature of allegations, gravity of offences, role attributed to the applicant Â accused and also looking to the punishment prescribed under the Act, I am not inclined to exercise the discretion in favour of the applicant. Accordingly, the present application stands dismissed. Rule is discharged.