
(2020) 05 PAT CK 0066

In the Patna High Court

Case No : Criminal Miscellaneous No. 71524 Of 2019

Sunil Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 27-05-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 23, 25, 29

Citation : (2020) 05 PAT CK 0066

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Digvijay Narayan Singh, S D Sanjay, Jharkhandi Upadhyay

Final Decision : Disposed Of

Judgement

Ahsanuddin Amanullah, J

1. The matter has been heard via video conferencing due to lockdown imposed on account of the COVID-19 pandemic.
2. Heard Mr. Sanjeev Ranjan, learned counsel for the petitioner; Mr. S D Sanjay, learned Solicitor General for the Union of India and Mr. Jharkhandi Upadhyay, learned APP for the State.
3. The petitioner is in custody in connection with Special Case No. 128 of 2017 (arising out of Unit Case No. 14 of 2017-18) dated 30.08.2017 instituted under Sections 21, 23, 25 and 29 of the NDPS Act.
4. The allegation against the petitioner is that he was the driver of the truck, caught in Supaul and when the vehicle was brought to Patna, 6075 gms. of heroin was recovered.
5. Learned counsel for the petitioner submitted that admittedly he is only the driver of the truck which, was owned by one Ali Ahmad. It was further submitted that even in his statement, which is admissible in law, Ali Ahmad has stated that the petitioner was also aware and had hidden the said narcotic. Learned counsel

submitted that even the statement of the petitioner is to the effect that he was aware of the heroin and had hidden it, along with the owner, in the hood of the truck. Learned counsel submitted that the Khalasi, who was also caught being in the truck, in his statement has stated that the consignment was of Ali Ahmad and not the petitioner and that he was aware that heroin had been loaded in the truck. Learned counsel submitted that in view thereof, when the Khalasi was also aware and has stated that the heroin did not belong to the petitioner, which the petitioner and Ali Ahmad have stated in their statement, the Khalasi having been granted bail by a co-ordinate Bench on 24.04.2019 in Cr. Misc. No. 7069 of 2019 (copy of which is Annexure-2 to the application), the petitioner having undergone a further period of over one year, deserves to be granted bail. Learned counsel submitted that just because the petitioner may have physically assisted in hiding the consignment would not substantially change the nature of allegation as in the statement of all persons, including the owner, the petitioner himself and the Khalasi, one thing is common, that is, the petitioner only knew about the fact that the article was heroine and had agreed, which is also the case of the Khalasi, who himself has stated that he was aware of such narcotic being loaded and transported in the truck. It was further submitted that the petitioner being a poor person has a family to support and was earning only Rs. 5,000/- per month and out of greed for a meager amount of Rs. 10,000/- had agreed to drive the vehicle carrying heroin and now him being under custody for almost three years, as he was arrested on 30.08.2017, the family, especially in the prevailing circumstances, is on the verge of starvation and facing untold hardship. Learned counsel submitted that the petitioner does not have any other criminal antecedent.

6. Mr. SD Sanjay, learned Additional Solicitor General submitted that the petitioner's case cannot be said to be identical to that of the Khalasi inasmuch as, both the owner i.e., Ali Ahmad and the petitioner himself in their statement have stated that only they were the persons present at the time when the heroin was loaded and the name of the Khalasi was not taken. It was further pointed out that the petitioner was actually involved in such activity and had physically helped the owner in hiding the consignment in the hood of the truck. It was further pointed out that the amount of recovery is huge as it is more than 6 kgs. of heroin and the value of the same is more than Rs. 18.32 crores.

7. Learned counsel for the petitioner, by way of reply, submitted that there cannot be any substantial difference between the case of the petitioner and the Khalasi, since the essence of the allegation against both is identical, of being aware that the consignment was heroin, and further, in all the three statements, it is common ground that the heroin neither belonged to the petitioner nor he was into such trade, which is only against the owner, namely Ali Ahmad. Thus, it was submitted that both the petitioner and the Khalasi are charged only with regard to being an accomplice as they have committed that they have full knowledge of the consignment being heroin. Learned counsel submitted that in such view of the matter, in law, the case of the petitioner and the Khalasi, in the

eyes of law, stand on the same footing. It was further submitted that the co-ordinate Bench while granting bail to the Khalasi had taken note, inter alia, of the period of incarceration and, thus, in the present case, the petitioner having undergone incarceration for a further period of more than a year, as compared to Khalasi, this Court would take note of such fact and grant indulgence to the petitioner.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, let the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned ADJ XXIInd, Patna in Special Case No. 128 of 2017 (arising out of Unit Case No. 14 of 2017-18), subject to the conditions (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond with regard to good behaviour of the petitioner, and (iii) that the petitioner shall also give an undertaking to the Court that he shall not indulge in any criminal activity. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds. The petitioner shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also lead to cancellation of his bail bonds.

9. The application stands disposed off in the aforementioned terms.