

(1998) 04 KAR CK 0015
In the Karnataka High Court
Case No : Criminal Petition No. 409 of 1997

The Intelligence Officer, Directorate of Revenue Intelligence, APPELLANT
Bangalore

Vs

Mohammed Abdul Rab alias Babloo and Others RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 439, 439 (2), 482
Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37

Citation : (1998) ILR (Kar) 2810 : (1998) 4 KarLJ 439

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri Ashok Haranahalli, Central Government Standing, for the Appellant; Sri C.V. Nagesh, for the Respondent

Judgement

1. The petitioner has questioned the order dated 5-2-1997, passed by the District and Sessions Judge, Belgaum, in Special Case No. 10 of 1997 directing to release the petitioners on bail.

2. Heard the learned Advocates appearing for the petitioner and the learned Advocates for the respondents.

3. The brief facts of the case are that one Taj Mohammed and others were accused before the lower Court on the allegation that they were engaged in manufacture of Mandrex tablets at New Pathan Building, Pune-Bangalore Road, N.H, No. 4, Kakati Village, Belgaum, The said premises was searched on 7/8-11-1996 and the petitioners seized psychotropic substances as per the mahazar of that date. In the complaint, the respondents are shown as accused 2 to 8. After completing the investigation, the petitioner filed a charge sheet against the 10 accused persons treating accused 9 and accused 10 as absconding. Accused 1 to accused 8 were produced before Court. Subsequently, accused, 1 to accused 8 filed application u/s 439, Cr. P.C. to release them on bail.

The learned Sessions Judge after giving notice to the Public Prosecutor and on objections being filed, heard both sides and allowed the petition insofar as the respondents 2 to 8 are concerned. However, the petition of the 1st accused came to be rejected. The said order is questioned by the Intelligence Officer, Directorate of Revenue Intelligence, petitioner herein, insofar as it relates to the grant of bail in favour of the respondents under Sections 439(2) and 482 of the Cr. P.C. The operative portion of the prayer reads as follows:

"Wherefore it is prayed that this Hon"ble Court may be pleased to allow this criminal petition and set aside the order dated 5-2-1997 in special case No. 10 of 1997 on the file of the Principal Sessions Judge (Special), Belgaum, direct continuation of the respondents in judicial custody and cancel the bail already granted"

This order is questioned.

4. Sri Ashok Haranahalli, the learned Senior Central Government Standing Counsel vehemently argued that the lower Court failed to notice the effect of Section 37 of the NDPS Act which is in the negative terms and limits the provisions of Cr. P.C. for grant of bail. In spite of repeated decisions rendered by their Lordships of the Supreme Court explaining the case of narcotic drugs in regard to the grant of bail, the learned Special Judge has granted bail which is not only contrary to the provisions of Section 37 but also the decisions rendered by the Apex Court. He also submitted that the Special Judge has failed to examine the matter in its proper perspective before proceeding to grant bail. The Court failed to note that these respondents were caught in the act of manufacturing the psychotropic drugs and by giving voluntary statements they have admitted their guilt which has evidentiary value and has to be taken as true until the contrary is proved at the time of trial. On these grounds, he submitted that the order passed by the learned Special Judge is liable to be set aside.

5. Per contra, Sri C.V. Nagesh, the learned Counsel for the respondents submitted that the petition as brought is not maintainable as the necessary ingredients of Section 439(2) of the Cr. P.C. have not been satisfied. He also submitted that the Court Was satisfied that there was no ground to believe that the accused are guilty and accordingly granted the bail in favour of these respondents who are only the employees of accused No. 1 whose bail application came t be rejected. He further submitted that this is neither an appeal nor . revision petition against the order passed by the learned Special Court. Therefore, the Court cannot cancel the bail unless it is made out that any one of the requirements of Section 439(2) of the Cr. P.C. are satisfied.

6. From a perusal of the order it is abundantly clear that the learned Sessions Judge has considered the case of the accused 1 in greater detail and rejected his bail application. As far as respondents 2 to 7 are concerned he has merely stated that at this stage, there are no good grounds to refuse bail to accused 2 to accused 8 and it is for the prosecution to prove its case against them. However, it

is necessary to mention that the petitioner approached this Court immediately with this petition and by order dated 7-2-1997 this Court issued interim order of stay staying grant of bail to the respondents by the Special Court. In view of this stay order the respondents have been in custody and the order passed by the learned Special Judge has not been implemented. With this background it is now necessary to consider as to whether the order passed by the learned Special Judge calls for interference. As indicated above, the learned Special Judge has not applied his mind insofar as it relates to these respondents.

7. However, the learned Counsel for the respondents contended that the Court cannot cancel the bail granted by the Court below unless it is established that the requirement of Section 439(2) of the Cr. P.C. are satisfied. In support of this argument, he placed reliance on a decision in *State of Kadugodi Police, Bangalore Vs. Gulzar Khan, , State of Karnataka Vs. Narayanappa, and Hadiani Dei v State of Orissa and Others*. In these cases, the Courts have held that the grant of bail is different from cancelling bail and these two matters will have to be considered and dealt with on a different basis. Very cogent and over-whelming circumstances are necessary for an order directing the cancellation of bail already granted. The grounds for cancellation of bail broadly are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade due course of justice or abuse of the concession granted to the accused in any manner (these are only illustrative and not exhaustive). Satisfaction of the Court on the basis of material placed on record of the possibility of the accused absconding is yet another reason justifying cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. As far as the principles enunciated regarding the cancellation of bail, there cannot be any quarrel. With these principles in mind, it is now necessary to consider the case on hand.

8. As stated above, the learned Sessions Judge has not applied the principle of law in its proper perspective. He did not even make any attempt to find out the part played by these accused persons and also the voluntary statement made before the petitioner at the time of investigation. From the investigation, it is clear that these respondents were working in the concern of the 1st accused and in the complaint, the petitioner has stated the part played by all these respondents. According to the complaint, respondent accused 2) was manufacturing dies and punches with special markings suitable for the manufacture of methaqualone tablets and he is also consciously aware that the dies and punches manufactured by him are for the use in the manufacture of Methaqualone/Mandrax tablets. He is in the practice of manufacturing and supplying such dies and punches to others in the past which he knew to have been used in the manufacture of the prohibited psychotropic substances. He also supplied dies and punches with special markings and assisted accused 1 in procuring machinery for the manufacture of mandrax tablets at the said New

Pathan Building, Kakati, Belgaum. As far as respondent 2/accused 3 is concerned, it is alleged that he assisted accused 1 in the manufacture of Methaqualone powder at the aforementioned farm house and also mandrax tablets at the aforementioned New Pathan Building, Kakati, Belgaum. He was aware that the banned drugs were being manufactured in the said premises and he knowing fully well associated himself with the illegal activities. Accused 4 i.e., respondent 3 had assisted the accused 1 in the aforementioned farm house in pulverising and drying the Methaqualone powder. It is also alleged that he was aware of the illegality of the activities. Accused 5 (R-4) was caught smuggling gold by the Marine and Preventive Wing of Mumbai Customs and has undergone COFEPOSA Detention. He was also arrested in connection with the possession of 2 Kgs. of brown sugar, a narcotic drug, banned under NDPS Act, 1985. At that time, he was on bail in that case. He was under trial before the designated Court of Mumbai in C.C. No. 244 of 1992. It is also alleged that he was assisting accused 1 in the manufacture of Methaqualone powder at the aforementioned farm house and also mandrax tablets in the said building. Accused 6 (R-5) is the brother of accused 1. It is also alleged that he was aware that his brother was dealing with narcotic drugs. He was arrested along with accused 1 in a case of seizure of heroin, a narcotic drug banned under the NDPS Act by Mumbai Police. Though he was aware that it is an offence to involve in the manufacture of banned substances under NDPS Act, he assisted the accused 1 in the manufacture of Methaqualone at the said farm house. Accused 7 (R-6) was earlier involved in a seizure of mandrax at Mandvi Factory, Madhya Pradesh and he was on bail at that time. He had the knowledge of manufacture of mandrax tablets and he had taught the manufacturing process to the persons at the said premises for consideration. He assisted accused 1 in the manufacture of mandrax tablets at the said building. He admitted his involvement in the present case in his statement dated 27/28-11-1996. Accused 8 (R-7) having knowledge that accused 1 is in the manufacture of banned psychotropic substances aided him in procuring the raw material required for the manufacture of mandrax tablets in the said premises. He also admitted to have attended to the overseas calls and acted as conduit between the overseas buyer of mandrax tablets and accused 1. Accused 2 to accused 6 and accused 8 have admitted their guilt according to the petitioner on 8-11-1996 when they were arrested in the premises. As far as accused 9 and accused 10 are concerned, it is not necessary to consider their case in this petition as they were absconding.

9. From this it is abundantly clear that at the stage of considering the bail application, the Court should have taken into consideration all the allegations made against the respondents in the complaint and also the material collected in support of the prosecution case to find out the existence of a prima facie case against them, A bare reading of Section 37 of the Act makes it clear that it has over-riding effect on Section 439 of the Cr. P.C. The Court has to give an opportunity to the Public Prosecutors to oppose the application for such release and if the Public Prosecutors oppose the application, the Court should satisfy that

there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while on bail. Though this section is very rigid in granting bail, the learned Special Judge without applying his mind to the provisions of law merely stated that the burden is on the prosecution to prove the guilt against the accused persons. Though the learned Sessions Judge has made a big list of the decisions cited at the Bar, he has not even had a glance of those decisions to know the principles enunciated by their Lordships. On the other hand, having elaborately discussed the involvement of accused 1, rejected his application without going into the role played by these respondents and the allegations made in the complaint and the materials collected against them and granted bail. Therefore, without going into the case any further, it can safely be said that the learned Sessions Judge has committed a great error in granting bail even though some of the respondents were involved in similar offences and cases are pending against them.

10. The learned Counsel for the respondents submitted that even if the Court has committed an error in granting the bail that itself is no ground for this Court to cancel the bail granted in favour of the respondents as none of the ingredients of Section 439(2) of the Cr. P.C. is alleged in the petition. It is no doubt true that the petitioner has not made any allegations bringing the case u/s 439(2) of the Cr. P.C. The question is whether it comes u/s 439(2) or u/s 482 of the Cr. P.C. Though the Court has passed an order granting bail in favour of these respondents, as stated above, the said order has been stayed by this Court. In other words, they were not released on bail and they have been in custody. Under those circumstances, the petitioner also has invoked Section 482 of the Cr. P.C. to set aside the order. No appeal or revision lies as against the order in regard to grant of bail. Therefore, in the extraordinary circumstances, it is open to the Court to invoke Section 482 of the Cr. P.C. Therefore, I hold that this is one such occasion where the Court has to invoke its extraordinary jurisdiction to set aside this impugned order.

11. In Department of C. Ex. (H. Q.) Vs. Rajesh Tulsidas Vedant, , the High Court has proceeded suo motu and initiated action exercising its inherent power u/s 482 of the Cr. P.C. and the supervisory writ jurisdiction vested in it under Article 227 of the Constitution of India for cancellation of the bail order passed in favour of the respondents by the learned Chief Metropolitan Magistrate, Bombay. The facts of that case are that on 10th August, 1988, the Officers of the Central Excise, laid a charge-sheet against the accused for the offence punishable under the NDPS Act. On the allegation that the accused was found in possession of brown sugar. However, when the accused were produced, the Additional Chief Metropolitan Magistrate ordered to release them on bail. One Rajesh was ordered to be released on bail on he furnishing surety in a sum of Rs. 1,50,000/- with one surety in the like amount or a cash deposit of Rs. 1,25,000/-. One Mukesh Chhotalal Shah made an application in the Court of the Chief Metropolitan Magistrate that he he accepted as surety in a sum of Rs. Six lakhs for Atul, Pradeep and Kirti. The Magistrate accepted him as surety for Atul and Kirti only

by his order dated 21-9-1988, but he did not accept him as surety for Pradeep and hence Mukesh Shah filed criminal application No. 1917 of 1988 in the Court and prayed that he be accepted as surety for Pradeep also. At the time of hearing the learned Counsel appearing for the petitioner therein, the Court felt that the matter is very serious and initiated suo motu action against the accused persons and directed issue of notice to them as to why the order granting bail itself should not be set aside.

12. After hearing both the parties, the Court cancelled the order of granting bail in favour of those accused persons and they were taken into custody. In this case as stated earlier, the accused are in custody and they have not been released on bail. Therefore, the question of cancelling bail does not arise. On the other hand, the question is only in regard to the legality and correctness of the order passed by the Court below. It is held in a decision in Aslam Babalal Desai Vs. State of Maharashtra, that once an accused is released on bail u/s 167(2), he cannot be taken back into custody merely on filing of the charge sheet and there must exist special reasons for so doing.

13. The learned Counsel for the respondents however submitted that these respondents are only employees of accused 1 and they were not aware of the illegal act being committed by accused 1. Therefore, the Court has rightly granted bail. As stated above, the involvement of these respondents at this stage cannot be taken as innocent employees. On the other hand, they have admitted before the petitioner their involvement in this case.

14. The learned Counsel for the respondents further contended that the respondents have retracted their involvement as soon as they were produced before the Court and he has drawn my attention to the order sheet maintained by the Court. It is no doubt true that they have made statements before Court when they were produced that the police have taken their signatures on blank papers and they have not made any statement. Whether such statements are admissible or not is a question for the Court to decide at the stage of trial. At this stage, this Court cannot go into that aspect. Suffice it to add that from the perusal of the complaint, it is prima facie clear that the petitioner has made specific allegations against these respondents and also their involvement in the previous cases of similar nature. The Hon'ble Supreme Court has time and again held that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provisions by introducing the Act 81 of 1985 specifying mandatory minimum imprisonment and fine. Such being the finding of the Apex Court, the

Courts cannot take a lenient view in a case of this nature to grant them bail.

15. The learned Counsel for the respondents further argued placing reliance on a decision in Shankar Krishnasa Habib and another Vs. State of Karnataka, , wherein this Court has granted bail on the ground that no case was made out by the prosecution so as to connect the accused that they were in exclusive possession of ganja. That order came to be passed on the basis of the facts of the case and also on the question that the High Court has jurisdiction to grant bail u/s 439 of the Cr. P.C. as it is not subject to the limitations mentioned u/s 37 of the NDPS Act. On the basis of it, the learned Counsel for the petitioner submitted that this Court cannot upset the order passed by the learned Court. For the reasons stated above, I am not inclined to accept the argument advanced by the learned Counsel for the respondents in this case.

16. In the result therefore, I proceed to pass the following:

ORDER

The petition is allowed. The impugned order granting bail to the respondents 1 to 7 is set aside. However, any observations made herein are confined only to this order and the Court below shall proceed with the trial not being fettered by any observations or comments made in this case.