
(2000) 09 PAT CK 0042
In the Patna High Court
Case No : Cr.W.J.C. No. 355 of 2000

Trilok Singh @ Tarlo Chand and Others	APPELLANT
Vs	
State of Bihar and Another	RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 209, 309
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 23, 25, 36, 36C

Citation : (2000) 3 BLJR 2114 : (2000) 4 PLJR 718

Hon'ble Judges : Narayan Roy, J; M.L. Visa, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—This application is for issuance of a Writ of habeas corpus or any other appropriate Writ, direction or order for the release of petitioners who are detained in Adarsh Central Jail, Beur, Patna, in Special Case No. 40/99 under Sections 20, 23 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, "NDPS Act") pending in the Court of Additional Sessions Judge-XI, Patna.

2. The facts, in short, giving rise to this application are that on receipt of a secret information on 12.11.99 regarding trafficking of "Ganja" concealed beneath bamboo cut pieces on a truck bearing No. USH-3965 and likely to be unloaded at village Jethuli, the officers of Directorate of Revenue Intelligence (in short, DRI), Regional Unit, Patna rushed to Baikhatpur about 10-11 kms. away from Jethuli and they ambushed the departmental vehicle beside a petrol pump and kept surveillance on the vehicles coming from Bakhtiyarpur towards Jethuli. At about 3.00 hours the officers of DRI saw the aforesaid truck coming from the side of Bakhtiyarpur. The truck was stopped by giving signal and the three petitioners were found in the truck. Petitioner No. 2 who was driving the truck, on query made by DRI officers, replied that only bamboo cut pieces were loaded on the

truck but on repeated inquiry he admitted that a few packets of "Ganja" were loaded and concealed beneath the bamboo cut pieces. The DRI officers keeping in view the safety brought the truck in DRI office, Patna where in presence of two independent witnesses the truck was searched and after removing a few layers of bamboo cut pieces from the middle portion of truck some packets wrapped in plastic were seen with smell of Ganja and on weighment the Ganja weighed 650 kgs. valued at Rs. 39,00,000/-. The packets of "Ganja" were seized. All the three petitioners confessed that they were carrying contraband Ganja with their full knowledge. The petitioners were arrested and forwarded to the Sessions Judge, Patna along with application u/s 43(b) of NDPS Act and memo of arrest, finger prints, seizure memo, voluntary and interrogatory statement of petitioners, etc. making allegations against them under Sections 20, 23 and 25 of NDPS Act were filed. The petitioners after their production before the Sessions Judge were remanded to jail custody awaiting final form. Therefore, from time to time petitioners were produced before the Sessions Judge and were remanded to jail custody and on 31.1.2000 complaint, and seizure memo along with copies of documents were filed before the Court of Sessions Judge who took cognizance of the case under Sections 20, 23 and 25 of the NDPS Act and transferred the case to the Court of Additional Sessions Judge-XI, Patna for disposal. At the time of taking cognizance all the three petitioners were in custody and the Sessions Judge ordered for production of petitioners in the transferee Court on the date already fixed which was 2.2.2000. On 2.2.2000 all the three petitioners were produced in the Court of Additional Sessions Judge-XI, Patna and the case was adjourned to 15.2.2000 and the petitioners were remanded to jail custody on that day for supply of copies of papers. Since, thereafter, the petitioners have not been produced before the trial Court although the case after 2.2.2000 has been adjourned on a number of dates.

3. The case of petitioners is that after 2.2.2000 when the petitioners were last produced before the trial Court the case had been adjourned to 15.2.2000, 7.3.2000, 24.3.2000, 13.4.2000 and 15.5.2000 but the petitioners have not been produced before the trial Court and for their non-production from jail custody before the trial Court no judicial order of remand has been passed on any of the aforesaid dates and therefore detention of petitioners in jail custody is illegal. Learned Counsel for the petitioners has submitted that the requirement of law as provided u/s 309 of the Code of Criminal Procedure (in short, Cr.P.C.) is that an accused under custody must, be produced before the Court concerned within 15 days and in the present case because the petitioners have not been produced on the dates mentioned above and there was no judicial order of remand of petitioners on any of the aforesaid dates, their detention in jail custody is without any authority and illegal and amounts to deprivation of their liberty guaranteed under Article 21 of the Constitution of India and, therefore, the petitioners are entitled to be release from jail custody.

4. A counter-affidavit on behalf of the Superintendent of Adarsh Central Jail, Beur, Patna, (respondent No. 2) has been filed stating therein that petitioners

were remanded to jail custody on 13.11.99 and next date of their production was fixed as 29.11.99 and on that day petitioners were produced before the Court below and on 10.12.99 and 7.2.2000 also the petitioners were produced before the Court below but on 15.2.2000 petitioners could not be produced due to non-availability of escort party but when on 31.5.2000 production warrant was received for the production of petitioners on 17.6.2000, the petitioners were produced before the Court below. About the date 7.3.2000 and 15.5.2000, it has been stated in the counter-affidavit that no production warrant of petitioners was received and therefore, they could not be produced in Court. The fact that on 31.1.2000 cognizance of the case was taken by the Sessions Judge who transferred the case to the Court of Additional Sessions Judge-XI, Patna for disposal and on that day all the three petitioners were in custody is not in dispute. From perusal of lower Court record which has been called for it further appears that after transfer of the case to the Court of Additional Sessions Judge-XI, Patna, the petitioners were produced before the Court on 2.2.2000 and case was adjourned to 15.2.2000 for supply of relevant papers to the petitioners and petitioners were remanded to jail custody. After 2.2.2000, the lower Court record shows that petitioners have not been produced before the Court on a number of dates fixed in this case.

5. Section 36C of NDPS Act provides that "save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor." There is no dispute on the fact that the Court of Additional Sessions Judge-XI, Patna, has been constituted as Special Court u/s 36 of the NDPS Act. Now coming to the point of applicability of provisions of Cr.P.C. to the proceeding before the Special Court as provided u/s 36C of NDPS Act, I find that Section 309, Cr.P.C. speaks about the power of Courts to postpone or adjourn the proceedings in inquiry or trial. No doubt, Sub-section (2) of Section 309, Cr.P.C. provides that when any inquiry or trial is postponed or adjourned for reasons to be recorded the accused who is in custody may by a warrant be remanded to jail custody and proviso to Sub-section (2) of Section 309, Cr.P.C. provides that no Magistrate shall remand an accused-person to custody under this Section for a term exceeding fifteen days at a time. This limit of remand of an accused in custody to 15 days at a time is meant only for a Magistrate and not for a Court of Sessions. I therefore find no merit in the argument advanced on behalf of the petitioners that u/s 309, Cr.P.C, the petitioners were to be produced after every 15 days before the Special Court. Besides this, Section 309 is in Chapter XXIV of Cr.P.C. under the heading "General provisions as to inquiries and trials". The heading of Section 309, Cr.P.C. clearly suggests that it is for regulating the postponement and adjournment of inquiry or trial pending before a Court. No doubt, Sub-section (2) of Section 309, Cr.P.C. provides that when a Court after taking cognizance or

commencement of trials postpones the commencement or adjourns any inquiry or trial it may by a warrant remand the accused if in custody. As stated above cognizance against the petitioners has already been taken and as the petitioners are in custody so their remand to custody is now guided by the provisions of Section 309, Cr.P.C. which do not lay down that an accused in custody has to be produced before a Court of Sessions on every fifteen days and every time fresh remand has to be made defining the limit of his detention in custody. His remand u/s 309(2), Cr.P.C. is only for the purpose of his production on the next date fixed in the trial. In the matter of other cases which are not covered by any special law when any of such case is committed to the Court of Sessions by a Magistrate when it appears to the Magistrate that the case is exclusively triable by a Court of Sessions, that commitment is made u/s 209, Cr.P.C. and if at the time of commitment an accused is brought from jail custody, the Magistrate u/s 209(b), Cr.P.C. shall subject to provisions of Cr.P.C. relating to bail remand the accused to custody during and until the conclusion of trial. In the cases under NDPS Act Special Courts constituted u/s 36 of NDPS Act, are authorised to take cognizance of a case without its commitment by a Magistrate. Section 36D of NDPS Act which contains transitional provisions lays down that until a Special Court is constituted u/s 36, NDPS Act, an offence committed under NDPS Act shall be tried by a Court of Sessions. In the present case, admittedly cognizance has been taken by a Court of Sessions on 31.1.2000. On that day all the petitioners were in custody. The Sessions Judge by the aforesaid order after taking cognizance not only transferred the case to the Court of Additional Sessions Judge-XI, Patna but also took note of the fact that petitioners were in custody at that time. Admittedly, he transferred the case to the Court of Additional Sessions Judge XI, Patna for trial and in the trial Court also petitioners were produced on 2.2.2000. During the trial, a Court of Sessions is not required to pass an order of remand after every 15 days and the order of taking cognizance by the Sessions Judge on 31.1.2000 and transferring the case to Additional Sessions Judge XI, Patna for trial when all the petitioners were in custody must be deemed that the petitioners were remanded to jail custody during and until conclusion of the trial inspite of the fact that it is not specifically mentioned in the order taking cognizance and transferring the case to the Court of Additional Sessions - XI, Patna.

6. It is true that on a number of dates fixed by the trial Court, the petitioners were not produced from jail custody. The production of petitioners from custody before the trial Court is necessary for trial. It is also true that respondent No. 2 in para-7 of his counter-affidavit has said that on 17.6.2000 all the three petitioners were produced before the Court below whereas from the record of Court below it is clear that on 17.6.2000 none of the petitioners was produced from jail custody. In view of this fact, the statement made in the counter-affidavit that on 17.6.2000 all the three petitioners were produced before the Court below is not correct but this fact cannot be considered to be a ground for releasing the petitioners from jail custody illegal.

7. I, therefore, find no merit in this application and dismiss the same with a direction to respondent No. 2 to produce all the three petitioners before the trial Court within a week from today.

8. Issue notice to respondent No. 2 to show-cause as to why appropriate action be not taken against him for swearing false affidavit before this Court. Cause must be shown within a period of two weeks from today.

Narayan Roy, J.

9. I agree.