
(1994) 02 PAT CK 0001
In the Patna High Court
Case No : Cr. Misc. No. 13752 of 1993

Union of India (UOI)

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 10-02-1994

Acts Referred:

Citation : (1994) 02 PAT CK 0001

Final Decision : Allowed

Judgement

Loknath Prasad, J.—This is an application u/s 482 read with Section 439(2) of the Code of Criminal Procedure for setting aside the order dated 29.6.1993 passed by the Sessions Judge, West Champaran in O.C. Case No. 3/93 through which opp. party No. 2 Noor Mohammad Mian was granted bail.

2. The facts in short giving rise to this application are that the Custom Officials got a confidential information that opp. party No. 2 is a professional smuggler and has stored huge quantity of charas in the house of Nathuni Darji in village Barnatt Sena and as such the house of Nathuni Darji was searched on 17.3.1993 in presence of several witnesses and 70 kg. of Nepali Charas valued at Rs. 28 lakhs were recovered and on enquiry it was gathered that this huge quantity of Nepali Charas has been smuggled from Nepal by opposite party No. 2 and kept in the house of this Nathuni Darji. The son of this opp. party No. 2 namely Mojahid was also apprehended and he too confessed that this huge quantity of Charas actually belonged to his father opp. party No. 2 and stored in the house of Nathuni Darji and as such a case bearing O.C. No. 3/93 was instituted as against opp. party No. 2, his son Mojahid and Nathuni Darji. Subsequently on 13.6.1993 this very opp. party No. 2 Noor Mohammad Mian was apprehended and on search from his possession 40 gms. of Charas were recovered and for that a separate case bearing O.C. No. 5/93 was instituted as against opp. party No. 2. It was submitted that though the opp. party No. 2 is smuggler and several cases were instituted against him and there was ample material and there was allegation of keeping Nepali Charas worth Rs. 28 lakhs, still the learned District

and Sessions Judge released the Petitioner on bail vide order dated 29.6.1993 and so this amounts to an abuse of the process of the court causing miscarriage of justice and the learned Sessions Judge has no power to enlarge this opp. party No. 2 on bail in view of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Opp. Party No. 2 was directed to appear and file show cause as to why his bail should not be cancelled and in pursuance of that he entered appearance through an Advocate and filed show cause alleging therein that he has falsely been implicated in both the cases by the Excise Department and actually Charas worth Rs. 23 lakhs had not been recovered from the possession of this opp. party No. 2 and he has rightly been granted bail by the learned Sessions Judge. Moreover, there is nothing on the record to show that this opp. Party is misusing the privilege of bail or tampering with the evidence or the investigation and the prayer for cancellation of bait at belated stage is not maintainable.

4. Admittedly, against opp. party No. 2 two cases u/s 23 read with Rule 53 of Narcotic Drugs and Psychotropic Substances Act, 1985 were instituted. The first case is O.C. No. 3/93 regarding allegation that 70 Kg. of Nepali Charas worth Rs. 28 lakhs were recovered from the house of Nathuni Darji and this contraband article actually belonged to this opp. party who smuggled the same from Nepal and in this very case this Opp. party was granted bail vide order dated 29.6.1993. Admittedly, there is Anr. case bearing O.C. No. 5/93 which was in respect of separate occurrence dated 13.6.1993 when he was apprehended and when his personal search was made, Charas weighing 40 gms. were recovered. It appears from the impugned order dated 29.6.1993 through which the bail was granted to this opp. party No. 2 in O.C. No. 3/93, that the learned Sessions Judge was fully conscious of the fact that as many as two cases were instituted and in respect of first case there was allegation that huge quantity of Charas valued at Rs. 2 lakhs had been recovered and those submissions were made on behalf of the learned P.P. that the opp. party No. 2 is a professional smuggler but still he has been granted bail without assigning any cogent reason for the same.

5. There is no two opinion that in a case instituted u/s 23 of the Narcotic Drugs and. Paschotropic Substances Act, 1985, the power of the Sessions Court is restricted by Section 37 of the said Act and Sub-clause (2) clearly says that when the prayer for bail is being opposed by the Public Prosecutor then the court when satisfied that there was no reasonable ground for believing that he is not guilty of the offence and that he is not likely to commit any offence, can grant bail in such cases. So the power of the Court of Sessions is restricted by Section 37 of the said Act. Learned lawyer for the Petitioner i.e. the Custom Department also relied upon the authority of the Hon"ble Supreme Court reported in Narcotics Control Bureau Vs. Kishan Lal and others, in which a principle was laid down that the High Court or the Court of Sessions has got no unrestricted power and the power is curtailed by Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and in such cases the court is not competent to release the

accused on bail. So in view of this authority and the provisions of Section 37 of the said Act, there is no doubt that the court below abused the processes of the court and there was definitely miscarriage of justice and it was definitely arbitrary exercise of discretion in granting bail in such serious case when admittedly immediately after the first occurrence, the second case under the same provision of law had been instituted as against opp. party No. 2.

6. No doubt, learned lawyer for the opp. party No. 2 submitted that opp. party No. 2 had already been released on bail in June, 1993 and so there is considerable lapse of time and there is nothing on record to show that this opp. party had been misusing his liberty or is tampering with the evidence and in such circumstances the bail granted to this opp. party is not liable for cancellation. In support of this contention, he relied upon the authority of Orissa High Court reported in 1992 Cri L.J. 1819. In this case also a principle was laid down that if there is arbitrary exercise of discretion by the court in granting bail, then certainly the bail is liable to be cancelled. Of course, in that case, which was merely u/s 306/498A of the Indian Penal Code, though it was found that the bail to the accused was granted improperly, still it was not cancelled because the cancellation prayer was made after three months or so but the instant case is otherwise because this is under Narcotic Drugs and Psychotropic Substances Act and the opp. party No. 2 appears to be professional smuggler and the court has no power to grant bail in arbitrary manner in view of Section 37 of the said Act. If that is so and if there is delay of about three months in preferring this petition for cancellation, then also it cannot be said that this petition is not maintainable due to lapse of time when admittedly the entire order granting bail to opp. party No. 2 is arbitrary and illegal exercise of jurisdiction.

7. For the reasons mentioned above, this application is allowed and the order dated 29.6.1993 passed in O.C. No. 3/93 granting bail by the learned Sessions Judge, West Champaran to opp. party No. 2 is hereby quashed and the bail granted to this opp. party No. 2 Noor Mohammad Mian is cancelled and the court below will take immediate step for apprehension of this opp. party No. 2 and for remanding him to custody. It is also hereby observed that the trial must be expedited and if somehow or the other trial could not be concluded within six months from the date of remand of this opp. party No. 2 to custody, then he is at liberty to file a fresh application of bail.

8. With these observations, this application is allowed in the manner indicated above.