

Mahmood Kurdeya vs Narcotics Control Bureau on 7 December, 2021

Bench: Sanjay Kishan Kaul, M.M. Sundresh

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1570/2021
[@ SLP (CrI.) No.7085/2021]

MAHMOOD KURDEYA

Appellant(s)

VERSUS

NARCOTICS CONTROL BUREAU

Respondent(s)

O R D E R

Leave granted.

The case of the prosecution is that the Narcotic Control Bureau (NCB) received secret information on 24.09.2018 that one Erbil Han (Turkish citizen) was smuggling large quantities of narcotics and psychotropic drugs from the Indira Gandhi International Airport. He was apprehended at the Airport and thousands of tablets of Tramadol X-225 were recovered from his luggage. This person named the appellant as the person who gave him the drugs on 23.09.2018 in his statement recorded under Section 67 of the NDPS Act. It was found that the bags in which contraband had been found had been purchased by the appellant and even the owner of the shop identified the appellant based on the photographs.

The appellant is a Syrian national living in Delhi as a refugee since 2015 and claims that he is a Chef by training. The appellant has been in custody since 27.09.2018 i.e. for a period of three years and three months. At the time of issuing notice, we had set forth the controversy in our order dated 23.09.2021. In substance, the plea of the counsel for the appellant was:

a) Tramadol X-225 tablets were regularly produced as medicines but were notified as psychotropic drug by a Notification dated 26.04.2018 with a sunset clause for three months.

b) It is his case that the manufacturer sold the drugs against cash as per the invoice dated 25.10.2017

as per paragraph 89 of the charge sheet. The manufacturer has been granted bail.

c) The appellant is alleged to be a carrier of more than 50 kgs of this drug which was handed over on 23.09.2018 after the period set out in the sunset clause.

d) The status report filed by the NCB showed that the trial was not being delayed on account of the appellant and though the charge sheet was filed on 23.03.2019, charges have still not been framed during this period of custody.

e) The appellant, though a Syrian national, is a registered refugee under the UNHCR living in India since 2015.

We perused the petition and the counter affidavit filed.

We may notice the stand of the learned counsel for the respondent that this transaction took place after the sunset clause even if the drugs were purchased within the sunset clause.

What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced. The manufacturer who sold the drugs to the appellant during the sunset clause himself has been granted bail.

We thus, grant bail to the appellant on terms and conditions to the satisfaction of the trial Court. Amongst the terms will be included the requirement of the appellant to report every Monday in the forenoon alternate week and mark his presence before the officer concerned. We take it that the passport and travel documents are already deposited by the appellant and if not deposited, the same should be so deposited including the refugee certificate.

The appeal is accordingly allowed leaving parties to bear their own costs.

.....J. [SANJAY KISHAN KAUL]J. [M.M. SUNDRESH] NEW DELHI;

DECEMBER 07, 2021.

ITEM NO.7

COURT NO.6

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.)

No(s). 7085/2021

(Arising out of impugned final judgment and order dated 24-08-2021 in BA No. 1030/2021 passed by the High Court Of Delhi At New Delhi) MAHMOOD KURDEYA Petitioner(s) VERSUS NARCOTICS CONTROL BUREAU Respondent(s) Date : 07-12-2021 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE M.M. SUNDRESH For Petitioner(s) Mr. Nikhil Goel, Adv.

Mr. Ramjee Pandey, AOR Mr. Ashwin V. Kotemath, Adv. Mr. Anand Dilip Landge, Adv. Mr. Varun Narang, Adv.

Mr. Sardar Jasbeer Singh, Adv. Mr. Rajendra Balan, Adv.

For Respondent(s) Dr. D.V. Rao, Adv.

Mr. Rajat Nair, Adv.

Mr. Shantanu Sharma, Adv. Ms. Deepabali Datta, Adv. Mr. Arvind Kumar Sharma, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL) (POONAM VAID) ASTT. REGISTRAR-cum-PS COURT MASTER (NSH) [Signed order is placed on the file]