

Dheeren Kumar Jaina vs Union Of India on 7 September, 2021

Bench: Uday Umesh Lalit, S. Ravindra Bhat, Bela M. Trivedi

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.965 OF 2021
(Arising out of SLP (CrI.) No.4432 of 2021)

DHEEREN KUMAR JAINA

Appellant

VERSUS

UNION OF INDIA

Respondent

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 17.03.2021 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur dismissing MCRC No.33163 of 2020.

The appellant herein is accused no.3 in complaint lodged before the Special Judge, NDPS, Burhanpur, Madhya Pradesh in N.C.B. Crime No.02/20 under Sections 8, 20, 27-AA, 28 read with Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (“the NDPS Act” for short).

According to the allegations in the charge-sheet, 120 kgs. of contraband “ganja” was involved in the matter. Reliance is placed on the statement of the accused recorded under Section 67 of the NDPS Act to support the contention that 120 kgs. of “ganja” was transported by the accused. However, what could be recovered was only 0.23 gm from the present appellant.

The appellant was arrested on 18.06.2020 and since then he has remained in custody. The application for bail having been rejected by the High Court by the order presently under challenge, the instant appeal has been preferred. The submissions advanced on behalf of the appellant were recorded in the order dated 01.07.2021 as under:

“Mr. Ashok Kumar Panda, learned Senior Advocate appearing for the petitioner submits:

a. The actual recovery in the instant case was 0.23 grams of ganja and it is only through the statement of the accused recorded under Section 67 of the Narcotic

Drugs & Psychotropic Substances Act, 1985 (for short “NDPS Act”) that the prosecution projects the quantity of contraband involved in the matter to be 120 kgs. of ganja.

b) In terms of the law laid down by this Court in Tofan Singh v. State of Tamil Nadu, 2020 SCC OnLine SC 882, the statements of accused recorded under Section 67 of the NDPS Act cannot by themselves be relied upon to return an order of conviction against the concerned accused.

c) The petitioner has been in custody since 18.06.2020.

d) The petitioner is a cleaner of a Truck.” The service was effected upon the respondent herein and the learned counsel for the respondent had appeared in this Court on 27.08.2021 on which date the matter was adjourned to 07.09.2021.

Though no affidavit in reply has been filed, the copy of the original complaint is part of the record. Considering the entirety of the matter, in our considered view, the case for bail is made out.

We, therefore, allow this appeal, set-aside the order passed by the High Court, and direct that the appellant be produced before the Trial Court within three days from today. The Trial Court shall release the appellant on bail, subject to such conditions as it may deem appropriate to impose so as to ensure the presence and participation of the appellant in proceedings before the Trial Court.

The appellant shall not misuse his liberty and shall not in any way influence the witnesses or hamper the due course and conduct of the trial.

With these observations, the criminal appeal is allowed.

.....J. (UDAY UMESH LALIT)J. (S. RAVINDRA BHAT)J.
(BELA M. TRIVEDI) New Delhi, September 07, 2021 ITEM NO.7 COURT NO.2 SECTION II-A
(HEARING THROUGH VIDEO CONFERENCING) S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS Petition for Special Leave to Appeal (Crl.) No.4432/2021 (Arising out
of impugned final judgment and order dated 17-03-2021 in MCRC No.33163/2020 passed by the
High Court Of M.P. Principal Seat At Jabalpur) DHEEREN KUMAR JAINA Petitioner(s) VERSUS
UNION OF INDIA Respondent(s) Date : 07-09-2021 This matter was called on for hearing today.
CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MR. JUSTICE S.
RAVINDRA BHAT HON'BLE MS. JUSTICE BELA M. TRIVEDI For Petitioner(s) Mr.
Ashok Kumar Panda, Sr. Adv.

Mr. Akshay C. Srivastava, Adv. Mr. Ravi Raj, Adv.

Mr. Shashwat Panda, Adv.

Mr. Anurag, AOR For Respondent(s) Mr. R.S. Suri, ASG Mr. P.V. Yogeshwaran, Adv.
Mr. Nachiketa Joshi, Adv. Mr. Piyush Beriwal, Adv.

Mr. B. V. Balaram Das, 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 placed on the file.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER