

Narcotics Control Bureau vs Mohit Agarwal on 19 July, 2022

Author: Hima Kohli

Bench: Hima Kohli, Krishna Murari, N. V. Ramana

Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Cri

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1001-1002 OF 2022
ARISING OUT OF
PETITIONS FOR SPECIAL LEAVE TO APPEAL (CRL.) NO. 6128-29 OF 2021

NARCOTICS CONTROL BUREAU

VERSUS

MOHIT AGGARWAL

JUDGMENT

Hima Kohli, J.

1. Leave granted.

2. The appellant-NCB is aggrieved by the judgment and order dated 16.03.2021 passed by the High Court of Delhi granting post-arrest bail to the respondent-accused in Case No.SC/1334/2020, where the respondent is facing trial for the offence under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 1.

3. information received by the officials of the Narcotic Control Bureau 2 on 1 For short 'NDPS Act' 2 For short 'NCB' Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 09.01.2020, that one parcel had been booked by a person from Agra named Gaurav Kumar Aggarwal, to be delivered to one Manoj Kumar at Ludhiana, Punjab and was stored at the godown of a courier company at Village Samalkha, Kapasehra, New Delhi, suspected to contain NRX tablets, being a narcotic drug, the NCB team reached the said godown and conducted search proceedings. The suspected parcel was identified and opened in the presence of two independent witnesses from amongst the staff members of the courier company. The said parcel

was opened and 50,000 Tramadol tablets weighing 20 kgs were recovered. As the tablets contained in the suspected parcel had been mis-declared and were without any valid bill, seizure proceedings were initiated by the officials of the NCB.

4. In the voluntary statement made by the accused, Gaurav Kumar Aggarwal under Section 67 of the NDPS Act, he stated that he had booked the parcel through a courier company to be delivered to Manoj Kumar, resident of Ludhiana, Punjab and that he had purchased the Tramadol tablets recovered during the search proceedings from the respondent herein, without any bill or prescription. Rather, it was mentioned on the parcel that it contained "surgical items". The accused Gaurav Kumar Aggarwal further stated that the respondent herein had purchased the above medicines from one Promod Jaipuria alias Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 Davinder Khandelwal, a resident of Jaipur and the son-in-law of Promod Jaipuria used to look after his business in Agra and that he had a godown where the drugs were stored.

5. The prosecution further stated that Gaurav Kumar Aggarwal had disclosed that he knew where the residence and the shop of the respondent were located and he could identify them. Accordingly, the said accused person accompanied the Raiding team to the premises of the respondent herein. On the disclosure made by the respondent herein, the Raiding team proceeded to the godown of Promod Jaipuria and conducted a search during which a cache of drugs covered under the NDPS Act, were recovered. The said drugs included 6,64,940 tablets of different psychotropic substances including Tramadol, Zolpidem and Alprazolam tablets/capsules weighing around 328.82 Kgs, 1400 Pazinc Injections amounting to 1.4 ltrs and 80 Corex Syrup bottles weighing 8 ltrs. Another 9,900 tablets weighing 990 gms. were recovered during the search conducted by the NCB officials at the premises of the co- accused, Manoj Kumar at Ludhiana.

6. In his statement recorded under Section 67 of the NDPS Act, the respondent herein disclosed that he had been illegally selling and purchasing the said tablets and capsules from Promod Jaipuria. The Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 respondent was taken into custody on 11th January, 2020. He moved two applications for grant of bail before the learned Special Judge, NDPS. Both the said applications were vehemently opposed by the appellant-NCB and were rejected by the Special Judge, NDPS. Aggrieved by the order dated 21 st July, 2020, whereby his second bail application was dismissed, the respondent filed a petition under Section 439 of the Code of Criminal Procedure, 1973 3 for grant of bail which has been allowed by the impugned order passed by the learned Single Judge of the High Court.

7. Arguing for the appellant-NCB, Mr. Jayant K. Sud, learned Additional Solicitor General, submitted that while passing the impugned order granting bail to the respondent, the High Court has erred in observing that no incriminating material was recovered by the NCB officials at his residence. He stated that the High Court has completely overlooked the fact that it was on the basis of the disclosures made by the respondent himself that huge quantities of narcotic drugs and injections were seized from the godown of the co-accused, Promod Jaipuria who was subsequently arrested by the Department; that the High Court has committed a grave error by not applying the

terms and conditions imposed under Section 37 of the NDPS Act; that the offence 3 For short 'Cr.P.C.' Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 committed by the respondent falls under the category of recovery of commercial quantity of narcotic drugs and in the light of the embargo placed in Section 37 of the NDPS Act, the respondent ought not to have been admitted to bail and that this is a case of constructive/conscious possession of the contraband substances as the respondent was an active participant in a organized gang that was involved in smuggling of drugs. Lastly, it was stated that there was sufficient circumstantial evidence available against the respondent which would disentitle him for being admitted to bail.

8. On the other hand, Mr. P.K. Jain, learned Advocate-on-Record appearing for the respondent vehemently opposed the present appeal and submitted that the High Court has rightly admitted the respondent to bail after he remained in custody for a period of one year and three months. He submitted that the impugned order was passed after granting a hearing to the counsel for the appellant-NCB and the respondent and the respondent has not violated any of the terms and conditions of bail imposed on him. On merits, it was urged that in the alleged incident, neither was the consignment of the narcotic drugs booked by or for the respondent. No recovery was made from the respondent and nothing was found from the search conducted at his residence and shop. Describing the respondent as a small-time Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 shopkeeper selling medicines at Agra, learned counsel submitted that he had no connection with the other co-accused persons and that his name had cropped up in the course of the statement of the co-accused, Gaurav Kumar Aggarwal under Section 67 of the NDPS Act, which was partly recorded at Agra and partly at Delhi. Though Gaurav Kumar Agarwal had taken the officials of the NCB team to the respondent's shop which was duly searched, nothing incriminating was recovered from there. Besides the above, both the co-accused, Gaurav Kumar Aggarwal and the respondent herein had at the first opportunity, retracted from their statements recorded under Section 67 of the NDPS Act and in view of law laid-down by this Court in Tofan Singh v. State of Tamil Nadu 4, any confessional statement recorded under Section 67 of the NDPS Act, is inadmissible in the trial of an offence under the said Act. Urging that the High Court has followed the aforesaid judicial dicta and after noting the fact that the charge-sheet had already been filed and besides the confessional statements of the accused recorded under Section 67 of the NDPS Act, no other incriminating material was forthcoming, the respondent had been rightly admitted to bail. Thus, learned counsel for the respondent contended that there is no infirmity in the impugned order that deserves interference.

4 2020 SCC Online SC 882 Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021

9. We have carefully considered the arguments advanced by learned counsel for the parties and have perused the records.

10. The provisions of Section 37 of the NDPS Act read as follows:

“[37. Offences to be cognizable and non-bailable. –(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-

section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

11. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadaliya Nodira”⁵, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are:

the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any

offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.” [emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” 6 and this Court has observed as below:

5 (2004) 3 SCC 549 6 (2020) 12 SCC 122 Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 “20. The expression ”reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.” [emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light

of law laid down by a Three Judges Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co- accused including the respondent herein showed that they were in touch with each other.

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

19. As a result of the aforesaid discussion, the present appeals are allowed and the impugned order releasing the respondent on post-arrest bail, is quashed and set aside. The bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith.

.....CJI.

[N. V. RAMANA]J. [KRISHNA MURARI]J. [HIMA KOHLI] New Delhi, July 19, 2022