

A UNION OF INDIA
v.
PRATEEK SHUKLA
(Criminal Appeal No. 284 of 2021)
B MARCH 08, 2021
[DR DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985:

- C s. 37 – Complaint u/s.8,9A,25A,23 and 29 of the Act – Alleging that the respondent was part of an international drug syndicate involved in diversion of a controlled substance – Bail granted by High Court – Appeal to Supreme Court – Held: The bail was granted without applying legal norms provided u/s. 37 – The reasons for granting bail do not reflect application of mind to the seriousness of the offence involved – Bail liable to be cancelled.

Allowing the appeal, the Court

- HELD: 1. *Ex facie*, there has been no application of mind by the High Court to the rival submissions and, particularly, to the seriousness of the allegations involving an offence punishable under the provisions of the NDPS Act. Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. [Para 11][575-D-E]**

- F 2.1 The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. There has been a serious infraction by the High Court of its duty to apply the law. The order granting bail is innocent of an awareness of the legal principles involved in determining whether bail should be granted to a person accused of an offence under the NDPS Act. [Para 11][575-E-F]

- H 2.2 The High Court was clearly not justified in granting bail and the reasons provided by the High Court, do not reflect application of mind to the seriousness of the offence which is

involved. The allegations against the respondent indicate that he was a member of an international drug syndicate involved in the diversion of a controlled substance; therefore, merely stating that the respondent as an educated person with a Bachelor of Technology “may not commit any offence” is an extraneous circumstance that the High Court should not have considered when granting bail for an offence under the NDPS Act. While determining that the respondent should be granted bail, the High Court has erroneously applied the law to the circumstances. [Paras 12 and 13][576-D-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 284 of 2021

From the Judgment and Order dated 07.05.2019 of the High Court of Judicature at Allahabad in Misc. Bail Application No. 9873 of 2019.

Praveen Agrawal, Gautam Kumar Laha, Advs. for the Appellants.

K. M. Nataraj, ASG., Ms. Binu Tamta, Vatsal Joshi, Sharath N. Nambiar, B. V. Balaram Das, Advs. for the Appellant.

P. R. Rajhans, Jyoti Kumar Singh, Mrs. Paroma Sengupta, Vishal Arun, Advs. for the Respondents

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Delay condoned.

2. Leave granted.

3. This appeal arises from a judgment and order of a Single Judge of the High Court of Judicature at Allahabad dated 7 May 2019, by which bail was granted to the respondent, who is alleged to be involved in the commission of offences punishable under the provisions of the Narcotic Drugs and Psychotropic Substances Act 1985¹.

4. The allegation is that, on 18 October 2018, secret information was received by an intelligence officer in the Delhi Zone of the Narcotics Control Bureau² that a huge quantity of acetic anhydride had been purchased by a company by the name of Altruist Chemicals Private Limited³; and that the Company had not submitted its quarterly returns for April – June 2018 and July – September 2018, as required under the

¹ “NDPS Act”

² “NCB”

³ “Company”

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- A Narcotic Drugs and Psychotropic Substances (Regulation of Control Substances) Order 2013. It has been alleged that based on a suspicion of diversion, a team of the NCB proceeded to the Company's registered office situated at 001, AG Block, Sector 45, Noida. On the premises being found locked, the owner was called to the spot. The owner allegedly informed the NCB team that the premises had been let out to a person by the name of Himanshu Rana, who is a co-accused in the complaint which has been lodged against the respondent. The lock was broken, upon which a quantity of 896 gms of acetic anhydride and 1.885 kg of amphetamine is alleged to have been found in the premises. During the course of the search, documents relating to a company by the name of M/s Griffin International were found and it was revealed that the respondent and an Afghan national by the name of Bismillah Khan Ahmadzai were the Directors of the Company. Notices were issued to the respondent and to Himanshu Rana, following which the statement of the respondent was recorded under Section 67 of the NDPS Act. It has been alleged that the disclosure revealed that a huge quantity of the controlled substance, acetic anhydride, was purchased and diverted to a godown situated at Village Karheda, Ghaziabad. During the search and seizure of the premises, a quantity of 9650 kgs of acetic anhydride was alleged to have been recovered and empty drums of acetic anhydride were also found. Notices under Section 67 of the NDPS Act were also issued to one Shamsuddin and Bismillah Khan Ahmadzai. It has been alleged that the respondent, the co-accused Himanshu Rana and Shamsuddin disclosed that Bismillah Khan Ahmadzai is a Director of the Company involved in its day to day affairs. Bismillah Khan Ahmadzai was apparently residing in the US and was arrested on his return to India. The residential premises of Shamsuddin Qarizada were searched and 500 gms of acetic anhydride was allegedly recovered. It has been alleged that on 21 October 2018, a search was conducted at the residential premises of the respondent which yielded, *inter alia*, a recovery of:
 - (i) An arms license issued in the name of one Mohit Kaushik, which had the photograph of the co-accused Himanshu Rana;
 - (ii) A Cheque Book of the respondent and an entity called Skyline Company bearing the name and address of the respondent;
 - (iii) The rubber stamps of Griffin International, Shiv Shakti Trading Company and the Company (Altruist Chemicals Private Limited);
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(iv) A rent agreement executed between one Dharmendra Pandey and Mohit Kaushik, proprietor of Skyline International; A

(v) A letter head and import-export certificate of a company named White World Multi Cane (I) Private Limited, which mentioned the name of the co-accused, Pawan Kumar Sharma, as Director, but had the photograph of the respondent; and B

(vi) Certain bank documents – letters addressed to the NCB and an agreement between the co-accused Himanshu Rana and Bismillah Khan Ahmadzai. C

5. The respondent was arrested during the course of the investigation on 22 October 2018. The lab report dated 27 October 2018 allegedly confirmed the presence of acetic anhydride and hydrochloric acid, though the presence of amphetamine has not been specifically recorded and has been sent for further verification. Based on this evidence, a complaint was lodged on 21 December 2018 for offences under Sections 8, 9A, 25A, 23 and 29 of the NDPS Act. It was alleged that all the accused were members of an international drug syndicate and had entered into a conspiracy for diversion, illegal storage, sale, purchase and export of the controlled substance. D

6. The respondent filed a bail application which was initially rejected by the Additional Sessions Judge III, Gautam Budh Nagar on 6 February 2019. Thereafter, a bail application was moved before the High Court, which resulted in the impugned order dated 7 May 2019. E

7. Mr K M Nataraj, learned Additional Solicitor General appearing on behalf of the appellant, submits that: F

(i) The respondent is alleged to be a part of an international syndicate involved in a diversion of a controlled substance; G

(ii) The respondent is a Director of Altruist Chemicals Private Limited;

(iii) Having regard to the incriminating material which has been recovered during the course of the investigation, as set out in the complaint, the involvement of the respondent *prima facie* has been shown to exist; H

- A (iv) In a matter involving serious violations of the NDPS Act, the Single Judge of the High Court was not justified in granting bail;
 - (v) Under the NDPS Act, the burden of proof lies on the accused and not the prosecution and the High Court has wrongly reversed the burden of proof; and
 - B (vi) Absolutely no valid reasons have been indicated in the judgment of the Single Judge for the grant of bail.
8. Pursuant to the notice that was issued by this Court on 16 December 2020, the respondent has been served. On 15 February 2021, the hearing of the proceedings was posted on 8 March 2021 on the request of the learned counsel appearing on behalf of the respondent, who had recently entered appearance, for filing a counter affidavit. A counter affidavit has been filed.
9. Learned counsel appearing on behalf of the respondent has adverted to the counter affidavit, which has been filed on behalf of the respondent. The contention of the respondent, as set out before this Court, by Mr Vishal Arun, learned counsel, is that:
- E (i) The respondent had resigned as a Director of the Company on 4 May 2018 having joined the Company earlier in the month of January 2018;
 - (ii) The quarterly returns in respect of acetic anhydride for the period January 2018 to March 2018 had been submitted to the concerned office of the NCB;
 - F (iii) After his resignation on 4 May 2018, the respondent has had no relationship with the Company and may not be held responsible for the non-filing of the quarterly returns;
 - (iv) The documents which have been filed before the trial Court would indicate that the alleged purchase orders for the controlled substance as well as the delivery at the premises of the Company took place after the resignation of the respondent;
 - G (v) After the respondent had resigned from the position of a Director in the Company, intimation was furnished to the NCB on 22 May 2018; and

(vi) The purchase orders are from the month of June 2018, by which date the respondent had no connection with the Company. A

10. While evaluating the merits of the rival submissions in the context of the correctness of the order passed by the High Court granting bail, it would be necessary, at the outset, to note the reasons which weighed with the High Court in doing so. The High Court having recorded the submissions of the respondent and of the learned counsel for the NCB has indicated the following reasons for grant of bail:

“Having considered the submissions and having perused the material on record, without commenting on the merits of the matter, *prima facie*, it appears that the applicant may not be guilty of any offence and considering his clean past and being an educated person as submitted that, he has a degree in Bachelor of Technology (B.Tech.) may not commit any offence in future, I am of the view that the applicant has made out a case for bail.” C

11. *Ex facie*, there has been no application of mind by the High Court to the rival submissions and, particularly, to the seriousness of the allegations involving an offence punishable under the provisions of the NDPS Act. Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. There has been a serious infraction by the High Court of its duty to apply the law. The order granting bail is innocent of an awareness of the legal principles involved in determining whether bail should be granted to a person accused of an offence under the NDPS Act. The contention of the respondent that he had resigned from the Company, Altruist Chemicals Private Limited, must be assessed with reference to the allegations in the criminal complaint which has been filed in the Court of the District and Sessions Judge, Gautam Budh Nagar (Annexure P-6). The relevant part of the complaint reads as follows:

“18. That during investigation of the case, letter dated 27.11.2018 was sent to the Registrar of Companies for providing details of the Directors etc of the company in question i.e. U/s Altruist Chemicals Pvt Ltd and vide its report dated 03.12.2018 Registrar H

- A of Companies provided the said information and from the perusal of said information/documents, it reveals that accused Prateek Shukla and Bismillah Khan are the Directors. Accused Himanshu Rana was also Director but he has resigned from the directorship. From the perusal of the documents, it also reveals that they had registered the company, i.e., Altruist Chemical Pvt. Ltd. At 001, Block Ab-Sector-45, Noida, which is a residential area and accused persons also obtained Unique Registration No. from the NCB on the above said premises.”
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12. We may also note at this stage the contention of the respondent in the application for bail which was filed before the High Court (Annexure P-8) that he had transferred 99% of his shareholding in the Company to Bismilla Khan Ahmadzai. Bismilla Khan Ahmadzai, as the prosecution alleges at this stage, is an Afghan national. The application for bail which had been filed before the High Court as well as the counter affidavit which has been filed in the present proceedings suppress more than what they disclose. Be that as it may, we are of the view that the High Court was clearly not justified in granting bail and the reasons provided by the High Court, as we have already indicated above, do not reflect application of mind to the seriousness of the offence which is involved. Indicating that the respondent as an educated person with a Bachelor of Technology “may not commit any offence” is an extraneous circumstance which ought not to have weighed with the High Court in the grant of bail for an offence under the NDPS Act.
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13. For the above reasons, we are of the view that the High Court has mis-applied the law to the facts in arriving at a decision for the grant of bail to the respondent. We accordingly allow the appeal and set aside F the impugned judgment and order of the High Court dated 7 May 2019. As a consequence, the bail which has been granted by the High Court to the respondent shall stand cancelled. The respondent shall surrender forthwith as a result of the cancellation of bail by the present order of this Court.

- G 14. Pending application, if any, stands disposed of.