

## **Union Of India vs Shri Shiv Shanker Kesari on 14 September, 2007**

**Equivalent citations: 2007 AIR SCW 5945, 2007 (7) SCC 798, 2007 (6) ALL LJ 355, AIR 2007 SC (SUPP) 908, (2007) 2 CRILR(RAJ) 839, (2008) 1 MH LJ (CRI) 400, (2007) 58 ALLINDCAS 36 (SC), 2007 CRILR(SC MAH GUJ) 839, 2008 (1) MADLJ(CRI) 1442, 2007 (4) RECCRIR 186, 2007 (3) SCC(CRI) 505, 2007 (4) CURCRIR 21, 2007 (58) ALLINDCAS 36, 2007 (4) PATLJR 201, 2007 (4) KER LT 421, 2007 (4) ALLCRILR 726, 2007 (59) ALLCRIC 778, 2008 (1) EFR 223, 2007 (11) SCALE 159, 2008 (39) OCR 347, 2007 ALL MR(CRI) 2969, 2007 CHANDLR(CIV&CRI) 366, (2007) 3 CHANDCRIC 298, (2007) 4 JLJR 193, (2007) 2 MARRILJ 129, (2007) 4 RECCRIR 63, 2007 CRILR(SC&MP) 839, (2007) 2 ALD(CRL) 869, 2008 (2) ANDHLT(CRI) 89 SC**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, D.K. Jain**

CASE NO. :

Appeal (crl.) 1223 of 2007

PETITIONER:

Union of India

RESPONDENT:

Shri Shiv Shanker Kesari

DATE OF JUDGMENT: 14/09/2007

BENCH:

Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:

**J U D G M E N T** CRIMINAL APPEAL NO. 1223 OF 2007 (Arising out of SLP (Crl.) No. 5621 of 2005) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the grant of bail by a learned Single Judge of the Allahabad High Court to the respondent who was charged for alleged commission of offence punishable under Sections 8, 15, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act'). Allegation was that he was found to be in possession of huge quantity of poppy straw. It is

the case of the prosecution that the raiding party seized nearly 400 Kg. of poppy straw from the possession of the accused-respondent. The prayer for bail made by the respondent was rejected by learned Special Judge (NDPS Act), Varanasi. The High Court by the impugned order accepted the prayer for bail on the ground that the recovery was not from the exclusive possession of the accused-respondent and other members of the family are involved in the case. It was noted that the respondent had no criminal history. Accordingly, the prayer for grant of bail was allowed.

3. According to learned counsel for the appellant the parameters of Section 37 of the Act have not been kept in view while accepting the prayer for grant of bail. It was pointed out that huge quantity of poppy straw was recovered from the possession of the respondent from house No.K.63/121, Gola Deena Nath, Varanasi. It is submitted that the prayer for bail was rejected by the District Judge in terms of Section 37 of the Act after elaborately dealing with the background facts. Bail can only be granted on fulfillment of two conditions i.e. (i) where there are reasonable grounds for believing that the accused is not guilty of the offence and (ii) that he is not likely to commit any offence while on bail. Learned Single Judge while accepting the prayer for bail has not recorded any finding that there are reasonable grounds for believing that the accused was not guilty. Further, no finding has been recorded that he is not likely to commit any offence while on bail.

4. Learned counsel for the respondent on the other hand submitted that the prosecution has failed to establish exclusive possession and the applicant-respondent had no criminal history. Therefore, it was submitted that the order of the High Court does not suffer from any infirmity.

5. Section 37 of the Act reads as follows:

"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 a term of imprisonment of five years or more under this Act 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".

6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in Section 37 (1)(b) (ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'. Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. (See: Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and another (1987) 4 SCC 497. and Gujarat Water Supplies and Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. and another [(1989) 1 SCC 532].

9. It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from in re Nice & Schreiber 123 F. 987, 988 to give a plausible meaning for the said word. He says, "the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined". It is not meant to be expedient or convenient but certainly something more than that.

10. The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See: Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd. (2003) 6 SCC 315).

11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.

13. In the instant case, it appears that there was a statement recorded under Section 67 of the Act. The respondent has taken a stand that the same was under coercion. The acceptability of such a stand is a matter of trial. Additionally, the High Court has not indicated any reason as to why it was of the view that the contraband articles were not seized from the exclusive possession of the accused-respondent.

14. Above being the position, the impugned order is clearly unsustainable and is set aside. The bail application shall be considered afresh by the High Court keeping in view the parameters of Section 37 of the Act. The bail application shall be taken up after the accused surrenders to custody. The accused-respondent is directed to forthwith surrender to custody. The High Court would do well to dispose of the bail application expeditiously after the accused surrenders to custody.

15. The appeal is allowed.