

Delhi High Court

Karan Singh vs The State (Nct Of Delhi) on 17 May, 2006

Equivalent citations: 130 (2006) DLT 114

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Bench: B D Ahmed

JUDGMENT Badar Durrez Ahmed, J.

1. The learned Counsel for the petitioner submits that the petitioner has been in custody since 13.07.2005 in connection with an alleged recovery said to have been made from the co-accused (Naresh Kumar). The alleged recovery from the co-accused (Naresh Kumar) is of two polythene bags of 1 k.g. each. One of the bags was said to contain 1.4% of diacetylmorphine and the other bag was said to contain paracetamol and caffeine. In any event, the learned Counsel for the petitioner does not advance any arguments with regard to the recovered substance and / or content of diacetylmorphine therein. His argument is that the alleged recovery from the co-accused (Naresh Kumar) cannot be linked with the present petitioner. He has submitted that only the secret information is pressed into service by the prosecution to link the present petitioner with the recovery from the co-accused (Naresh Kumar). Apart from this, there is no other evidence.

2. He referred to the decision of the Supreme Court in the case of Amarsingh Ramjibhai Barot v. State of Gujarat 2005 III AD (Cr.) S.C. 625 and, in particular, he referred to paragraph 8 of the judgment. In that case two persons Amarsingh and Danabhai were found together and substances were recovered from them separately. The court held that although they were found together, they cannot be implicated under Section 29 of the NDPS Act as in that case there was no warrant to arrive at such a conclusion at all as there was no evidence to suggest that there was any criminal conspiracy among the two. The learned Counsel for the petitioner cited this judgment to lay emphasis on the point that merely because two persons are apprehended from the same spot and recoveries are made from them does not mean that Section 29 would ipso facto be attracted. His contention is that there must be some other evidence to connect the two persons so as to attract the provisions of Section 29 of the NDPS Act. He then relied upon the decision of this Court in the case of Kassu Ram v. State which was a decision in bail application No. 558/2005 delivered on 13.04.2005. In that case, after reference to the decisions of the Supreme court in the case of Bhugdomal Gangaram and Ors. v. The State of Gujarat (1983 Cr.L.J. 1276), Dalbir Singh @ Dhulia v. State Cr.L. No. 8/2003 decided on 04.02.2003 and Subhash v. State Cr.L.M. No. 3940/2002 decided on 13.2.2003, this Court had come to the conclusion that merely on the basis of secret information without the informant being named and / or produced as a witness, the foundation of a case under Section 29 could not be laid. This court concluded as under:

8. Upon considering the arguments advanced by the learned Counsel for the parties, it appears that apart from the secret information that the prosecution is alleged to have received there is no other evidence to link the present petitioner with the recovery of the contraband from the co-accused (Mohd.Rafiq). Since the said secret information would not be admissible, in view of the aforesaid decisions, it is clear that the petitioner cannot be, prima facie, linked with the recovery of the contraband. That being the case, even if it is assumed that Section 37 of NDPS Act applies, there are reasonable grounds for believing that the petitioner is not guilty of the offence.

3. The learned Counsel for the petitioner also referred to the decision in the case of N. Ayyappan v. State Bail Application No. 405/2005 dated 21.4.2005 wherein the decision in the case of Kattu Ram (supra) was relied upon for the purposes of showing that secret information was inadmissible unless and until and provider of such information is examined in court.

4. The learned Counsel for the State submitted that while it is true that no recovery was effected from the present petitioner, a recovery of 1 k.g. of a substance containing diacetylmorphine was made from the co-accused (Naresh Kumar) and that the State was prosecuting the present petitioner under Section 21 read with Section 29 of NDPS Act on account of the recovery from the co-accused. The learned Counsel for the State, however, was unable to point out any other evidence other than the secret information to link the present petitioner with the alleged recovery from the co-accused (Naresh Kumar). In view of the decisions referred to above and in view of the facts and circumstances of this case, I feel that the petitioner would be entitled to bail. The petitioner has already been in custody since 13.07.2005. Accordingly, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with two sureties of the like amount to the satisfaction of the concerned court. This bail application stands disposed of.