

Islamuddin @ Chottey vs State Of Delhi on 16 August, 1999

Equivalent citations: 1999VIAD(DELHI)765, 2000CRILJ108, 82(1999)DLT449, 1999(51)DRJ558

Author: Cyriac Joseph

Bench: Cyriac Joseph

ORDER

Cyriac Joseph, J.

1. This is a petition filed under Section 439 of the Code of Criminal Procedure read with Section 37 of the Narcotic Drugs and Psychotropic Sub-

stances Act, 1985 (for short 'the NDPS Act') for interim bail for a period of two months. The petitioner is the accused in FIR No.17/98 registered at Police Station, Narcotic Branch, Kamla Nagar, Delhi under Sections 21/61/85 of the NDPS Act. The case against the petitioner is at the trial stage. The petitioner had earlier filed an application for regular bail but it was dismissed by this Court on 20th May, 1999 holding that it was not possible to say that this Court was satisfied that there were reasonable grounds for believing that the petitioner was not guilty of the offences under Section 21 of the NDPS Act or that he was not likely to commit any offence while on bail. While dismissing the petitioner's application for bail this Court had pointed out that the petitioner was involved in as many as 21 other cases under the Excise Act, the NDPS Act, the Arms Act and the Gambling Act. It was also pointed out that the petitioner was a Bad Character (B.C.) of Police Station Chandni Mahal.

2. The present petition for interim bail is filed on the ground that the petitioner's wife Smt. Nafisa is suffering from acute appendicitis and is under the treatment of Dr. R.P. Jindal at Jindal Hospital, Yamuna Vihar. According to the averments in the petition Smt. Nafisa was admitted in the Jindal Hospital on 1.6.1999 and she has to undergo surgery in connection with the above illness. The presence of the petitioner near the bed of his wife is very necessary at the time of the surgery. The mother of the petitioner is an old and infirm lady of about 75 years and there is nobody in the family to look after Smt. Nafisa during the period of her stay in the hospital. It is also stated that the petitioner is the only male member of the family. The petitioner has prayed that he may be released on bail for a period of two months from the date of his release.

3. Notice of this application was given to the learned Public Prosecutor. Ms. Mukta Gupta, learned Public Prosecutor submitted that on verification it was found that the petitioner's wife was under treatment in Jindal Hospital for appendicitis and that no surgery has been conducted so far.

According to the learned Public Prosecutor the petitioner's wife is not admitted in the hospital at present. Learned Public Prosecutor further submitted that the petitioner was involved in 21 other cases. In four of them he was convicted and in seven of them he was acquitted and the remaining cases are pending. According to the learned Public Prosecutor the petitioner is a Bad Character (B.C.) of Police Station Chandni Mahal. The application for interim bail was opposed by the learned Public Prosecutor.

4. The present petition is filed under Section 439 of the Code of Criminal Procedure read with Section 37 of the NDPS Act. Section 439 of the Code of Criminal Procedure deals with the special powers of High Court and Court of Sessions regarding bail. Section 37 of the NDPS Act stipulates the conditions or requirements for grant of bail in the case of a person accused of an offence punishable for a term of imprisonment of five years or more under the NDPS Act. For convenience Section 37 of the NDPS Act is extracted hereunder:-

"37. Offences to be cognizable and non bailable

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(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 offences 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 or any other law for the time being in force, on granting of bail.

5. A plain reading of Section 37 of the NDPS Act shows that the provisions contained therein are applicable and operative "notwithstanding anything contained in the Code of Criminal Procedure 1973." It also shows that the limitations on granting of bail specified in clause (b) of sub-

section (1) of Section 37 are in addition to the limitations under the Code of Criminal Procedure 1973 or any other law for the time being in force on granting of bail. Therefore, whatever be the scope and extent of the power of the Court under Section 439 of the Code of Criminal Procedure, while considering an application for bail-whether it is regular bail or interim bail-in the case of a person accused of an offence punishable for a term of imprisonment of five years or more under the NDPS Act, the power of the Court remains restricted by the limitations specified in clause (b) of

subsection (1) of Section 37 of the NDPS Act. Hence in such a case the Public Prosecutor should be given an opportunity to oppose the application and if the Public Prosecutor opposes the application the Court cannot grant bail unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Bail cannot be granted on any other ground in view of the limitations on granting bail specified in clause (b) of the sub-section (1) of Section 37. The Court has no power to grant bail on the ground of illness or hospitalisation of the spouse or on any similar ground. Admittedly the petitioner is facing trial for offences under Sections 21/61/85 of the NDPS Act which are punishable for a term of imprisonment of five years or more. Hence the petitioner's application for grant of bail is governed by the limitations specified in clause (b) of sub-section (1) of Section 37 of the NDPS Act. As already observed this Court has already rejected the petitioner's application for regular bail holding that this Court is not satisfied that there are reasonable grounds for believing that he is not guilty of the alleged offences and that he is not likely to commit any offence while on bail. In these circumstances the petitioner is not entitled to the grant of interim bail.

6. Learned counsel for the petitioner contended that the above interpretation given to Section 37 of the NDPS Act would lead to a situation where this Court would not have power to release an accused on bail even for a few days for genuine reasons and purposes like meeting the ailing or dying parents or spouse or children and attending the cremation or the funeral of such near relations. Learned Counsel pointed out that in similar circumstances interim bail was being granted by the Courts in exercise of the powers under Section 439 of the Code of Criminal Procedure. Though I appreciate the difficulty pointed out by the learned counsel for the petitioner, I am helpless in view of the legislative injunction contained in Section 37 of the NDPS Act. Section 439 of the Code of Criminal Procedure does not contain any restrictions or limitations similar to those specified in clause (b) of sub-section (1) of Section 37 of the NDPS Act. In the absence of such restrictions or limitations the Court can, in exercise of powers under Section 439 of the Code of Criminal Procedure, grant interim bail to the accused on humanitarian and compassionate grounds. But such a discretion is not available to the Court in the case of a person accused of an offence punishable for a term of imprisonment of five years or more under the NDPS Act. The intention of the Parliament is clear from the non-obstante clause in Section 37 of the NDPS Act which makes the provisions of Section 37 operative in spite of any provision contained in the Code of Criminal Procedure 1973. The intention of the Parliament is further clear from sub-section (2) of Section 37, by which it has been clarified that the limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations under the Code of Criminal Procedure or any other law for the time being in force on granting of bail.

If the application of the provisions of Section 37 of the NDPS Act results in undue hardship or injustice in certain situations, it is for the Parliament to consider the matter and to take remedial action.

7. Learned counsel for the petitioner contended that this Court could grant interim bail to the petitioner in exercise of the powers under Section 482 of the Criminal Procedure Code. I do not find any merit in this contention. Section 37 of the NDPS Act starts with the non obstante clause "Notwithstanding anything contained in the Code of Criminal Procedure 1973". Hence in the matter

of granting bail, the power of the High Court under Section 482 of the Code of Criminal Procedure is subject to the limitations contained in Section 37 of the NDPS Act. Section 37 of the NDPS Act overrides the provisions contained in Section 482 of the Code of Criminal Procedure also.

8. Learned counsel for the petitioner also contended that the petitioner has not yet been found guilty or convicted for the alleged offence and that he is only facing the trial and that the possibility of his being acquitted in the case cannot be ruled out. He further contended that it would be totally unfair and unjust to deny to an accused like the petitioner the opportunity to be with his sick and ailing relations for a few days on humanitarian and compassionate grounds. According to the learned counsel, if this Court takes the view that this Court has no power to grant interim bail to accused persons like the petitioner in view of the limitations on grant of bail specified in clause (b) of sub-section (1) of Section 37 of the NDPS Act, they will be left without any remedy. He further contended that the denial of interim bail to the petitioner for the above reason would amount to infringement of his fundamental right under Article 21 of the Constitution of India. However, while dealing with an application for bail under the provisions of the Code of Criminal Procedure and the NDPS Act, this Court is bound by the provisions contained in those Statutes and this Court cannot overlook or over rule the provisions contained in those Statutes. I am not sure whether the view taken by me with regard to Section 37 of the NDPS Act and the power of the Court to grant interim bail will leave the petitioner without a remedy. It is for the petitioner to examine whether he is entitled to approach the High Court under Article 226 of the Constitution of India for appropriate relief in view of the peculiar situation arising out of the strict operation and application of the provisions of Section 37 of the NDPS Act.

9. In the light of the above discussion I hold that the petitioner is not entitled to the grant of interim bail. Hence the petition is dismissed.