
(2014) 1 ILR (Ori) 1096

Orissa High Court

Case No: BLAPL No. 21418 of 2013

Lokanatha Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision: Dec. 10, 2013

Citation: (2014) 1 ILR (Ori) 1096

Hon'ble Judges: B.N. Mahapatra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.N. Mahapatra, J.

This petition has been filed u/s 439, Cr. P.C. in connection with T.R. Case No. 34 of 2013 corresponding to C.T. Case No. 380 of 2013 arising out of Kundheigola P.S. Case No. 53 of 2013 now pending in the file of learned Additional District and Sessions Judge-cum-Special Court, Deogarh. The petitioners are alleged to have committed offence punishable u/s 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act, 1985")

2. Prosecution story is that all the four petitioners were carrying 21.150 Kgs. of Ganja in one gunny bag on 20.07.2013 by a Cement Colour (Bolero) Car which was intercepted by the S.I. of Police, Kundheigola Police Station, while he was on patrolling duty. It is further stated that all the petitioners have admitted that they had been doing business in purchasing and selling of ganja regularly.

Mr. S. Dash, learned Additional Standing Counsel for the State submitted that since the quantity seized is above 20 Kgs., it is commercial quantity and therefore, the petitioners may not be released on bail in view of Section 37 of the NDPS Act, 1985.

3. Mr. Behera, learned counsel for the petitioners submitted that since the petitioners alleged to have been carrying 21.150 Kgs. Ganja are four in number, it cannot be said that each person was carrying the commercial quantity. If 21.150 Kgs. Ganja is divided by four, the quantity of Ganja which falls in the share of each person would be little more than 5 Kgs. which is much less than 20 Kgs. in other words, it is not more than 20 Kgs. to be said as commercial quantity as prescribed by the Central Government vide Notification No. 1055(E) dated 19.10.2001 issued under Clauses (vii-a) and (xxiii-a) of Section 2 of the NDPS Act, 1985. Therefore, Section 37 of the NDPS Act, 1985 has no application. Moreover, the accused persons are in custody since 21.07.2013. Hence, a prayer was made to grant bail to the petitioners.

4. On the rival contentions of the parties, the only question that falls for consideration by this Court is as to whether 21.150 Kgs. of Ganja recovered from four accused persons jointly should be taken as commercial quantity warranting punishment u/s 20(b)(ii)(C) of the NDPS Act, 1985 upon each of the accused or it would be apportioned among the four accused persons so that the rigour of Section 37 of the NDPS Act would not come to play while considering the bail application.

5. To deal with the above questions, it is necessary to know what is contemplated in Section 20(b)(ii)(C) and Section 37 of NDPS Act. Section 20(b)(ii)(C) reads as follows:-

20. Punishment for contravention in relation to cannabis plant and cannabis.--Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder:--

(a) xx xx xx

(b) produces, manufactures, possesses sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable.-

(i) xx xx xx

(ii) where such contravention relates to sub-clause(b),--

(A) xx xx xx

(B) xx xx xx

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Undisputedly, the quantity of Ganja involved in the present case is 21.150 Kgs., which is commercial quantity. Once the quantity of Ganja involved is commercial quantity, the mandate of Section 37 of NDPS Act comes into operation which reads 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 u/s 19 or section 24 or section 27-A 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.

6. Thus, every offence punishable under NDPS Act shall be cognizable. The power to grant bail to a person alleged to have committed offence punishable u/s 20(b)(ii)(C) of NDPS Act, 1985 is subject to the restriction prescribed by sub-clause (b) of sub-section (1) of Section 37 of NDPS Act, 1985. First of all, an opportunity to the Public Prosecutor has to be given to oppose the application for release of the accused. The other twin conditions are (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the offence alleged to have been committed; (ii) he is not likely to commit any offence while on bail. Thus, recording of satisfaction on both aspects is sine qua non to grant bail in respect of offence punishable u/s 19 or Section 24 or Section 27-A and also offence involving commercial quantity.

Section 37(2) further provides that the limitations on granting bail specified in sub-clause (b) of sub-section (1) are in addition to the limitation under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. As it appears from the language of Section 37(1)(b), the Court must adopt a negative attitude towards bail.

7. By the Amending Act, 2001 (Act 9 of 2001) amendments were brought to the NDPS Act, 1985 which rationalized the punishment structure under the NDPS Act, 1985 by providing greater or lesser sentence depending upon the quantity of narcotic drugs or psychotropic substances carried. "Small quantity" has been defined u/s 2(xxiii-a) to mean

the quantity lesser than the quantity specified in the notification by the Central Government in its Official Gazette. Commercial quantity has been defined u/s 2(vii-a) to mean any quantity greater than the quantity specified by the Central Government by Notification in the Official Gazette. As per Serial No. 55 of the Notification of the Central Government bearing No. S.O. 1055(E). dated 19.10.2001 issued under Clauses (vii-a) and (xxiii-a) of Section 2 of the NDPS Act, 1985, so far ganja is concerned, the quantity specified is 1000 Gms. and 20 Kgs. in relation to "small quantity" and "commercial quantity" respectively.

8. The statement of objects and reasons of the Amending Act, 2001 inter alia states as follows:

Statement of Objects and Reasons of 2001:-

The Narcotic Drug and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of a minimum ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalize the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalization of the sentence structure under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.

9. The intention of the legislature for introduction of the amendment as it appears is to punish the people who commit less serious offence with less severe punishment and those who commit grave crime such as trafficking in significant quantities with more severe punishment.

10. Since in case of involvement in commercial quantity more severe punishment is provided, an attempt is being made by the petitioners to take plea of apportionment of the entire quantity of 21.150 Kgs. among four accused persons from whom it was seized. Such a plea is not permissible since the accused were individually and jointly possessing and carrying 21.150 Kgs. of Ganja in one gunny bag without any pass or permit. Therefore, all of them are liable to be prosecuted for offence punishable u/s 20(b)(ii)(C) of the NDPS Act, 1985. In course of hearing, no statutory provision was brought to the notice of this Court to the effect that where any quantity of narcotic drugs and/or psychotropic substance is seized from the possession of more than one person, the same shall be divided by number of persons from whom seized and apportioned towards share of each of them.

11. In the fact situation, this Court is of the considered view that 21.150 Kgs. of Ganja recovered from four accused persons jointly should be taken as commercial quantity warranting punishment u/s 20(b)(ii)(C) of the NDPS Act, 1985 upon each of the accused persons.

12. In view of the above, it is not possible on my part to give a finding as required u/s 37 of the NDPS Act for grant of bail that there are reasonable grounds for believing that the petitioners are not guilty of the offence alleged to have been committed and that they are not likely to commit any such offence while on bail. In the result, the petition for bail is dismissed.