(2000) 2 ACR 1341

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No. 3746 of 2000

Mohd. Fahim (In Jail) — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision: May 4, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 21, 37, 50

Citation: (2000) 2 ACR 1341

Hon'ble Judges: B.K. Rathi, J

Bench: Single Bench

Advocate: P. Khare, for the Appellant; A.G.A., for the Respondent

Judgement

B.K. Rathi, J.
The applicant Mohd. Fahim seeks bail in a case u/s 18/21 of the N.D.P.S. Act.

2. I have heard Sri P. Khare, learned Counsel for the applicant and the learned A.G.A.

3. The prosecution case is that on the basis of a tip off Special Operation Group of P.S. Badshahi Naka, district Kanpur Nagar, headed by C.O., Daya Nand Misra accompanied by other police personnel, recovered 200 grams of illicit smack from the possession of the applicant at about 11.30 a.m. on 12.8.1999 near triangle of Coperganj, police station Badshahi Naka. The ground pressed in support of the bail plea is that no compliance was made of Section 50 of the N.D.P.S. Act and that the co-accused Madan Mohan Shukla from whom 220 gms. smack was simultaneously recovered was bailed out by Hon''ble Krishan Kumar, J. in Criminal Misc. Bail Application No. 4564 of 2000 by order dated 16.3.2000. Thus, the plea of parity is advanced. The applicant denies the alleged recovery and pleads false implication.

4. So far as the question of parity is concerned, this Court held in the case of, Sita Ram v. State XVIII 1981 ACC 182 , that the claims of the principle of consistency and demand for parity by the accused, however, are not compelling ones and cannot override the Judge"s contrary view in the case before him if even the awareness of the desirability of consistency fails to move him to modify his view. In other words, this is only a factor to be considered and not a governing consideration. In the case of Ashok Kumar Vs. State of Punjab, , the Hon"ble Supreme Court declined to follow the principle in the matter of sentence.

5. With all respects to the Hon"ble Judge who granted bail to the co-accused Madan Mohan Shukla on the ground of non-compliance of Section 50 of the N.D.P.S. Act, I wish to say that the view taken by him is not in tune with the law laid down by the Apex Court. The Hon"ble Supreme Court has laid down in the case of State of Punjab Vs. Baldev Singh, etc. etc., , that the question whether or not the safeguard provided in Section 50 were observed would have, however, to be determined by the Court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safeguards provided in that Section were complied with, it would not be advisable to cut short a criminal trial.

6. In another case of Union of India Vs. Ram Samujh and Another, , it has been ruled that to check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offence under the N.D.P.S. Act should not be released on bail during trial unless mandatory conditions provided in Section 37 justify the same. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the N.D.P.S. Act. It can be granted in case where 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. It is the mandate of the Legislature, which is required to be followed.

7. In the present case, the quantity recovered was 200 gms. smack which, by no means, can be deemed to be insignificant. The chemical examiner"s report is there that it is heroine. It is common knowledge that heroine is highly priced narcotic drug which is most dangerous and deleterious. The recovery of such highly priced narcotic drug in sizeable quantity of 200 gms. cannot easily be planted falsely, particularly when the applicant has not shown that any of the members of police party making the recovery was inimical to him. The party was headed by an officer of the rank of Circle Officer. The memo of arrest and recovery does mention this fact also that compliance of Section 50 of the N.D.P.S. Act was made. The order of the lower court rejecting the bail shows that 31.1.2000 was fixed for the framing of charges. Naturally, now the case must be in the process of recording evidence or in concluding stage.

8. Having regard to the totality of the facts and circumstances of the case, I do not find any ground to release the accused/applicant on bail. The bail application is hereby rejected.