

(2000) 11 AHC CK 0142

Allahabad High Court

Case No: Criminal Miscellaneous 1st Bail Application No. 13321 of 2000

Vishwajeet Singh alias Laley
Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Nov. 2, 2000

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21, 27, 8

Citation: (2001) 1 ACR 554

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

Bench: Single Bench

Judgement

B.K. Rathi, J.

The applicant has made a request for bail in Crime No. 704 of 2000 u/s 8/21, N.D.P.S. Act, P.S. Kotwali, district Ghazipur. According to the case of the prosecution search of the applicant was taken and 5 grams of heroin was recovered on 27.7.2000.

2. I have heard Sri G. S. Chaturvedi, learned Senior Advocate for the applicant and the A.G.A.

3. It is contended by the learned Counsel for the applicant that there is no criminal history of the applicant and it is a first crime. It is further contended that 5 grams heroin is a small quantity for which the punishment provided under Clause (a) of Section 27, N.D.P.S. Act is the imprisonment for a term which may extend to one year or with fine or with both. That the applicant is in jail since 27.7.2000 and considering the quantity of the heroin recovered, the applicant is entitled to bail.

4. Two Notifications regarding small quantity were issued by the Government of India, which were numbered as S.O. 825 (E) dated 14.11.1985 and S.O. 827 (E) dated 14.11.1985. Both these Notifications were superseded and the following Notification No. S.O. 508 (IC) was issued on 16th July, 1996:

Noti. No. S.O. 503 (IC) dated 16th July, 1996--In exercise of the power conferred by Explanation (1) to Section 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and in supersession of the Notification of the Government of India, the Ministry of Finance Department of Revenue Nos. S.O. 825 (E) dated 14th November, 1985 and S.O. 827 (E) dated the 14th November, 1985, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies the quantity mentioned in the column (3) of the Table below in relation to the narcotic drugs and psychotropic substances mentioned in the corresponding entry in Column (2) of the said Table, as "small quantity", for the purposes of Clause (a) of that Section.

Quantity
(in
gram).

(2)

7.

2.

3.

5. It is contended that according to this Notification the quantity of heroin upto 5 grams is a small quantity. As against this, the A.G.A. has referred to the Notification No. S.O. 527 (E) dated 16.7.1996. This Notification and the above Notifications are of the same date. This Notification is under Clause (b) of Section 27, N.D.P.S. Act, whereas the Notification referred to by Sri Chaturvedi is under Clause (a) of Section 27 of N.D.P.S. Act.

6. The perusal of Section 27, N.D.P.S. Act shows that Clause (a) of the said section deals with the cocaine, morphine, diacetylmorphine or any other narcotic drugs or any psychotropic substances as may be specified in this behalf by the Central Government. Clause (b) would apply to narcotic drugs or psychotropic substances other than those specified in or under Clause (a). Cocaine, morphine, diacetyl-morphine, which is heroin are included under Clause (a), regarding which the Notification is referred to above. According to this Notification 5 grams of heroin is a "small quantity".

7. In the circumstances, the applicant is entitled to bail.

8. Let applicant Vishwajeet Singh alias Laley Singh, involved in Case Crime No. 704 of 2000 u/s 8/21, N.D.P.S. Act, P.S. Kotwali Sadar, District Ghazipur, be released on bail on his furnishing a personal bond with two sureties each of the like amount to the satisfaction of the Special Judge (N.D.P.S. Act) Ghazipur.