

(2013) 11 DEL CK 0030

Delhi High Court

Case No: Bail Application 1202 of 2013

Niranjan Jayantilal
Shah

APPELLANT

Vs

Directorate of Revenue
Intelligence

RESPONDENT

Date of Decision: Nov. 19, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 2(vii)(a), 2(vii)(b), 2(vii)(d), 25A, 29

Citation: (2013) 11 DEL CK 0030

Hon'ble Judges: Sunita Gupta, J

Bench: Single Bench

Advocate: S.S. Das, for the Appellant; Satish Aggarwal, for the Respondent

Final Decision: Disposed Off

Judgement

Sunita Gupta, J.

This is a petition filed by the petitioner u/s 439 Cr.P.C. for grant of regular bail. It is submitted by learned counsel appearing for the petitioner that respondent had filed a criminal complaint against the petitioner and others which is pending before the Special Judge, Narcotic Drugs and Psychotropic Substances Cases, Saket Courts, New Delhi being S.C. No. 09A/12 for the offences punishable u/s 9A, 25A and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS" Act) on the allegations that on 15th December, 2011 on the basis of secret information the officers of Directorate of Revenue Intelligence ("DRI") have recovered and seized 100 kgs. of Pseudoephedrine from a vehicle bearing registration No. HR-18A-0077 and it is alleged that at that time petitioner was driving the said vehicle. Nothing was recovered from the possession of the petitioner or at his instance. The substance in question is neither narcotic drug nor psychotropic substance but it is a controlled substance as defined u/s 2(vii)(d) of the NDPS Act. Rigour

of Section 37 of the NDPS Act is not attracted in the present case. No minimum punishment has been prescribed for the possession of the aforesaid contraband substance. The substance in question has lot many legitimate uses and the said substance is also one of the main component for manufacturing cough syrup and it has many other medical uses. Earlier a bail application was moved which was dismissed. The petitioner is in custody since 15th December, 2011, as such, he be released on bail. Reliance was placed on Bail Application No. 216/2005 titled as N.C. Chellathambi v. N.C.B. decided on 20th April, 2005, Bail Application No. 2036/2004 titled as Ajay Aggarwal v. Narcotics Control Bureau decided on 20th January, 2005, Criminal Misc. No. M.27654/2008 titled as Rajiv Kumar @ Sukha v. The State of Punjab decided on 6th March, 2009, Criminal Application No. 165/2011 titled as Faiyaz Ahmed Rasool Shaikh v. Union of India decided on 5th May, 2011 and [Chakrapani Dutt Vs. State](#) .

2. The application is opposed by Mr. Satish Aggarwal, learned counsel for the respondent. In the reply it is submitted that the earlier bail application was dismissed by this Court vide a speaking order dated 30th August, 2012 and there is no fresh ground nor is there any change in the circumstances. Reference was also made to the order dated 29th March, 2012 in Bail Application No. 810/2011 titled as Rizwan Ahmad v. DRI which was also a case of controlled substances and the application was dismissed. Even the SLP was dismissed. Charges have been framed and evidence is being recorded. There is no delay on the part of the prosecution. Co-accused has not been granted bail. It is a case of recovery and seizure of 100 kgs. of Pseudoephedrine. Keeping in view the heavy recovery, the application is liable to be dismissed.

3. Rebutting the submission of learned counsel for the respondent it was submitted by learned counsel for the petitioner that Rizwan Ahmad, relied upon by learned counsel for the respondent, does not help him, inasmuch as, in that case also recovery was of the controlled substance and therefore Section 37 of NDPS Act was not applicable, yet on that ground alone the application was dismissed. SLP was dismissed by a non-speaking order. In the subsequent case titled as [Department of Customs Vs. Hemant Kumar](#), it was observed that the judgment of Rizwan Ahmad is contrary to the explicit language of Section 37 of NDPS Act. The same is per incuriam. That being so, the said order does not come in the way of the petitioner for getting the relief of bail.

4. As per the prosecution case on 14th December, 2011 official of Directorate of Revenue Intelligence received information that huge quantity of controlled substance would be transported in a Toyota Innova Car bearing registration No. HR-18A0077 which would be coming near Kamal Cinema, Safdarjung Enclave, New Delhi at about 10:30 a.m. on 15th December, 2011. Raiding party was constituted by the officials of respondent wherein public witnesses were also joined. Toyota Innova car was intercepted and 100 kgs. of Pseudoephedrine was recovered from the vehicle which was being driven by the petitioner. Co-accused Harjinder Ram and one Sh. Sanjay Singh were also in the car. During the investigation complicity of Sanjay Singh with the crime could not be established, thus he was made a witness. After completion of investigation, complaint

was filed against the petitioner and co-accused Harjinder Ram and the trial is still pending.

5. During the course of arguments, it was fairly conceded by learned counsel for the respondent that bar of Section 37 of the NDPS Act is not attracted in the present case since as per the prosecution 100 kgs. of Pseudoephedrine was recovered which is a controlled substance within the meaning of Section 2(vii)(b) of the Act. Pseudoephedrine is not a narcotics drug as envisaged u/s 2(vii)(a) of the Act. In N.C. Chellathambi (supra) one tonne of ephedrine was recovered, in Ajay Aggarwal (supra) recovery was of 1600 liters of Acctic Anhydride, in Rajiv Kumar @ Sukha (supra) recovery was of 25 kgs powder ephedrine hydrochloride, in Faiyaz Ahmed Rasool Shaikh (supra) and another recovery was of 290 kgs of pseudoephedrine, in Chakrapani Dutt (supra) recovery was of 100 liters of Acctic Anhydride, and in all these cases since the accused had remained in custody for certain period, they were released on bail. As regards Rizwan Ahmed, where the bail application was dismissed, it is fairly conceded by learned counsel for DRI that DRI had not taken any plea that the petitioner was not entitled to bail due to rigour of Section 37 of the NDPS Act on which ground alone the application was dismissed, however, it was submitted that since the SLP has been dismissed, therefore, the petitioner is not entitled for bail. In Department of Customs (supra) relied upon by learned counsel for the petitioner, it was observed that the judgment in Rizwan Ahmad is contrary to the explicit language of Section 37 of NDPS Act and the same is per incuriam.

6. Keeping in view the totality of facts and circumstances of the case, coupled with the fact that the petitioner is in custody since 15th December, 2011, he is admitted to bail on his furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the concerned Trial Court. Petitioner shall deposit his passport, if any, with the Trial Court and shall not leave the country without the permission of the concerned Trial Court. He is further directed to furnish his current address to DRI and in case of any change in address, DRI be informed immediately.

7. The application stands disposed of in the above terms. A copy of the order be given dasti.