
Suresh Dutta Vs State of Tripura

Bail Application No. 79 of 2002

Court: Gauhati High Court (Agartala Bench)

Date of Decision: Aug. 9, 2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 438(1)#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 36A(3)

Citation: (2002) 3 GLR 495 : (2003) 1 GLT 107

Hon'ble Judges: B.B. Deb, J

Bench: Single Bench

Advocate: P.K. Biswas, M.R. Laskar, H.K. Bhowmik and A. Paul, for the Appellant; D. Sarkar, PP, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.B. Deb, J.

On reasonable apprehension of being arrested In connection with Bishalghar P.S. Case No. 53/2002 u/s 20(b) of the

Narcotic Drugs and Psychotropic Substances Act, 1985 (shortly called "NDPS Act") the petitioner has filed this petition u/s 438(1) of the Cr.PC

seeking pre-arrest bail direction.

2. At the outset, the learned Public prosecutor raised a preliminary objection contending, inter alia, that any person, who is implicated or having

reasonable apprehension of being arrested in connection with any offence punishable under NDPS Act has no right to seek pre-arrest bail

direction as the provision of Section 438 of Cr.PC is not made applicable relating to any offence punishable under NDPS Act.

3. Mr. P.K. Biswas learned counsel for the accused petitioner was allowed sufficient time vide order dated 2.8.2002 to refer the related provisions

of law Including any citation on that score regarding permissibility of invoking the provision of Section 438 of Cr.PC in such case and the matter

has been heard on Friday (05.08.2002). The learned counsel for the petitioner referring the provision of (section 36 c of the NDPS Act submits

that all provisions relating to bail and bonds as have been provided under the Code of Criminal Procedure is applicable mutatis mutandis to an

offence punishable under the NDPS Act, of course subject to certain limitation prescribed u/s 37 of the said Act.

4. Section 36C of the NDPS Act is reproduced below :-

36C. Application of Code of proceedings before a special Court. - Save as otherwise provided in this Act, the provisions of the Code of Criminal

Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the

said provisions, the Special Court shall be deemed to be a Court of Session, and the person conducting a prosecution before a Special Court, shall

be deemed to be a Public Prosecutor.

5. Section 37 of the NDPS Act deals with the provision of post arrest bail. In view of Clause (a) of Sub-section (1) of Section 36A of the NDPS

Act, all offences under the said Act are triable by the Special Court constituted by the State Government in this behalf, where Clause (b) of Sub-

section (1) of Section 36A of the NDPS Act deals with the power of the Magistrate to detain the accused produced before him under arrest and

Clause (c) of the said Sub-section deals with the power of the Special Court in relation to the accused person forwarded before him, whereas

Sub-section (3) of Section 36A of the said Act deals with the power of the High Court regarding bail matters during investigation/trial. For

convenience sake, Sub-section (3) of Section 36A of the NDPS Act is reproduced below :-

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail u/s 439 of the Code of

Criminal Procedure, 1973 and the High Court may exercise such powers including the power under Clause (b) of Sub-section (1) of that section

as if the reference to "Magistrate" in that section included also a reference to a "Special court" constituted u/s 36.

6. The afore-quoted provision only reminds the powers of the High Court relating to bail matter of any custody accused u/s 439 of the Cr.P.C.

The afore-quoted provision of the NDPS Act specifically sounds that "the powers of the High Court regarding bail u/s 439 of the Code of Criminal

Procedure, 1973" is in no way affected While the Parliament incorporated the aforequoted Sub-section recognising the High Court's power

regarding bail u/s 439 of the Cr.P.C. deliberately omitted the powers of the High Court regarding pre-arrest bail direction u/s 438 of the Cr.P.C

and as such in my considered opinion, by necessary implication the powers of the High Court, regarding the pre-arrest bail direction as available u/s

438 of the Cr.P.C is excluded.

7. Section 36C of the NDPS Act prescribes that "the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and

bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be

a Court of Session," but Section 36A of the said Act never deals with the powers of the High Court regarding bail and bonds. The High Court's

power regarding bail during investigation/ trial of an offence under the NDPS Act is only available in Sub-section (3) of Section 36A of the NDPS

Act.

8. The learned counsel for the petitioner relying upon a decision of the Hon'ble Apex Court, in Union of India (UOI) Vs. Thamisharasi and Others,

submits that the High Court has ample power to invoke, of course in a befitting case, the Jurisdiction vested in it u/s 438 of the Cr.P.C. On careful

perusal of the aforesaid decision it reveals that the Hon'ble Apex Court in the aforesaid case has never been called upon to examine the powers

of the High Court u/s 438 of the Cr.P.C. rather the Hon'ble Apex Court interpreted the provision of Section 167(2) of the Cr.P.C. and its

applicability in view of Section 37(1)(b) of the NDPS Act. 9. For the reasons as have been narrated above, I am of the considered opinion that in

view of Sub-section (3) of Section 36A of the NDPS Act, the power of the High Court to invoke Section 438(1) of the Cr.P.C relating to an

offence punishable under the NDPS Act has been excluded by necessary implication and as such the High Court is not vested with any jurisdiction

to invoke the power u/s 438(1) of the Cr.P.C relating to an accused petitioner involved in connection with a case punishable under the NDPS Act.

10. The petition, therefore, stands rejected.