(2009) 09 GAU CK 0044

Gauhati High Court

Case No: None

Jai Prakash Singh		APPELLANT
	Vs	
Union of India (UOI) and Another		RESPONDENT

Date of Decision: Sept. 10, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 37

Citation: (2010) CriLJ 1633 : (2010) 1 GLR 594 : (2009) 5 GLT 376

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Musahary, J.
Heard Mr. A. M. Mazumdar, learned senior counsel assisted by Mrs. N. Saikia, learned Counsel for the petitioner and heard also Mr. D. Das learned Counsel for the respondents/Union of India.

2. This is an application u/s 439, Cr. P.C. seeking bail of the accused-petitioner, namely, Shri Jai Prakash Singh, in connection with Special (NDPS) Case No. 05/2005 arising out of DR1 Guwahati Case No. 2/NARC/GANJA/DR1/GAU/2005-2006 dated 5-9-2005 u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was arrested on 21-9-2005 in connection with the aforesaid case.

3. Mr. Mazumdar, learned senior counsel submits that the accused-petitioner, Shri Jai Prakash Singh is an illiterate poor villager earning his livelihood by working as labourer in the agriculture field, who hails front the State of Bihar. The accused-petitioner was

travelling in the truck and he was not aware of any illegal materials carried in the said vehicle. He started from Patna on 15-8-2005 and reached Imphal on 17-8-2005, as directed by his employer, Shri Datol Singh. He was travelling in the said vehicle as a Khalasi and he had no knowledge about the Ganja loaded in the said truck which was seized by the officials of the Directorate of Revenue Intelligence. According to Mr. Mazumdar, the accused-petitioner is innocent inasmuch as he is a labourer only and has no conscious possession of the Ganja and as such, he may be enlarged on bail.

4. He further submits that u/s 20 of the NDPS Act, punishment for offence i.e. transportation of Ganja, is 5 years. The accused-petitioner has been in jail for last 3 years and 11 months without trial and the trial in the aforesaid criminal case is not likely to complete soon and as such, the accused-petitioner is entitled to get released on regular bail.

5. Mr. Das, learned Counsel for the respondents/Union of India vehemently opposes the submissions made by the learned senior counsel for the accused-petitioner and submits that the present accused-petitioner is not an innocent person. He was engaged by his employer to cany the seized Ganja and as such, it cannot be said that he is innocent and had no knowledge about the loaded Ganja in the said vehicle. Mr. Das produces a report submitted by an Intelligence Officer of the Directorate of Revenue Intelligence for perusal of this Court.

6. The accused-petitioner earlier moved a bail application No. 223/2009, which was rejected vide order dated 5-2-2009 with a direction to the learned Sessions Judge, Tezpur, Sonitpur to make an effort to complete the trial as early as possible preferably within 4 months from the date of receipt of the order. Although, some witnesses have been examined, the trial in the aforesaid case could not be completed and as such, the petitioner has filed the present application for granting him regular bail.

7. This Court by an order dated 14-8-2009 directed the learned Sessions Judge to furnish status report on the progress of trial on or before 28-8-2009. The learned District and Sessions Judge, Sonitpur has submitted the aforesaid report vide his letter dated 24-8-2009 before the Registry which has been placed before this Court. As per the report of the learned District & Sessions Judge, the Officials of the Directorate of Revenue Intelligence had recovered and seized Manipuri Ganja weighing 9208.6 kgs., 08 Nos. of AK series rifles, 12 rounds of live ammunitions and 10 Nos. of extra magazines from the possession of the accused-persons while they were trafficking the above seized contraband in Army coloured truck, fake army fatigues and AK series rifles with ammunitions. The petitioner is one of the accused-persons, who was arrested by the Officials of the Directorate of Revenue Intelligence. The prominent accused Md. Samsul Haque Choudhury alias Talukdar alias Munna Bhai alias Pakhi Mian was declared absconder. P. & A. was issued against the absconding accused-persons. Two prosecution witnesses were examined on 18-2-2008 and other two more witnesses were also examined on 25-3-2008. Thereafter one more prosecution witness was examined on

26-3-2008. In the meantime, Md. Samsul Haque Choudhury alias Talukdar alias Munna Bhai alias Pakhi Mian was arrested by police and he was produced before the learned trial Court on 23-5-2008 on the strength of production warrant. The case was again fixed for evidence. Another absconder namely, Hyder Ali surrendered before the learned trial Court on 10-7-2008. The accused Md. Samsul Haque Choudhury alias Talukdar alias Munna Bhai alias Pakhi Mian fled away from the jail custody from the Gauhati Medical College Hospital while he was undergoing treatment there. However, the case was, fixed for evidence and in the meantime, the aforesaid accused Md. Samsul Haque Choudhury alias Talukdar alias Munna Bhai alias Pakhi Mian was arrested by West Bengal Police and he was produced in the Court of learned Sessions Judge at Guwahati in connection with some other cases and he was again produced in the Court of the Sessions Judge, Sonitpur on 10-8-2009 from the central jail Guwahati on the strength of production warrant. The case is fixed on 16-9-2009 for evidence of the remaining witnesses.

8. At the time of hearing Mr. Mazumdar, placing a copy of order dated 2-7-2008, passed by this Court in B. A. No. 2751 of 2008 whereby some co-accused persons, Sree Kumar Singh and Ors. were released on bail, submits that the present accused-petitioner, being similarly situated, may also be enlarged on bail. Mr. Mazumdar, also refers to Jaya Simha Vs. State of Karnataka, : Jaya Simha Vs. State of Karnataka, wherein it has been held by the Apex Court that in a case where the accused appellant had been in jail for about 3 years and 9 months and the trial is likely to take a long time for completion, the Court can grant bail to the accused-person.

9. I have carefully perused the report submitted by the Intelligence Officer aforesaid. The report reveals that the present accused-petitioner has been working with Datol Singh since 2002 and he used to deliver Ganja to different persons in the villages supplied by Datol Singh in his Marshal Jeep as and when directed, for which, the present accused-petitioner used to earn Rs. 3,000/- to Rs. 5,000/- from Datol Singh. In August, 2005, Datol Singh offered the accused-petitioner Rs. 10,000/- for bringing the Ganja loaded in Truck from Imphal, which he agreed. He contacted various persons in Manipur as directed by his employer. The present accused-petitioner took active participation in the trafficking of drugs along with other co-accused persons, who were apprehended by the Intelligence Officials while intercepting the Truck in which they were travelling with seized Ganja.

10. Having gone through the aforesaid report, I am not at all convinced that the accused-petitioner is not involved in or connected with the aforesaid case. Simply because he is an illiterate villager or a daily labourer engaged by his employer, cannot be a ground for believing that he is innocent and he had no knowledge about the carriage of Ganja in the Truck, in which, he was travelling along with other offenders. The accused-petitioner cannot claim for release on bail merely because some co-accused persons have been granted bail. From the report, it is found that the involvement of the accused-persons, who were enlarged on bail, was not as serious as the involvement of the present accused-petitioner inasmuch as the aforesaid accused-persons were not

caught red-handed from the truck carrying the Ganja. While granting the bail the Court is bound to consider the involvement of each accused-person in the alleged offence. I have found the involvement of the present accused-petitioner is much more serious and I am convinced that he is not entitled to get the same treatment as has been given to the other co-accused persons who were enlarged on bail.

11. The case of Jaya Simha Vs. State of Karnataka, cited by Mr. Mazumdar, learned senior counsel for the accused-petitioner, has no applicability to the present case. The aforesaid case relates to counterfeit stamps and stamp papers registered under the provisions of the Indian Penal Code. In the said case, the accused-person was granted bail mainly on the ground that he was in jail for about 3 years and 9 months and the trial which started would take long time for completion. From the report of the learned District and Sessions Judge, Sonitpur, it transpires that in the present case, the trial could not be completed during last three and half years due to absconding of the main accused person and also escaping of kingpin accused Md. Samsul Haque Choudhury alias Talukdar alias Munna Bhai alias Pakhi Mian from the Gauhati Medical College Hospital for which the learned trial Court is not to blame. The delay has been caused due to non co-operation of the accused-persons.

12. In the present case, the petitioner was arrested in connection with the NDPS Act and for his release on bail, it must be considered under the provision of Section 37 of the NDPS Act, 1985. The accused-petitioner is required to satisfy the Court u/s 37 of the NDPS Act whether there are sufficient grounds for believing that the accused is not guilty and while on bail he is not likely to commit any offence. In Union of India (UOI) Vs. Shri Shiv Shanker Kesari, it is held that while dealing with a bail matter, the Court is not called upon to record a finding of not guilty, it is for the limited purpose essentially confined to the question of releasing the accused on bail. The Court is called upon to see that if there are reasonable grounds that the accused-person is not guilty and record its satisfaction about the existence of such ground. The Court is to record a finding that while on bail, the accused is not likely to commit any offence. There should also exist some materials to come such a conclusion. There is no statement in the petition that on his release on bail, the accused-petitioner would not commit any offence. Nor is there any statement to the effect that he would make himself available or appear before the learned trial Court as and when required during trial. Moreover, there is no statement to the effect that he can provide fit and proper surety for releasing him on bail. Securing presence of accused-person during trial is the main concern of the Court. In absence of any assurance, the Court cannot take it granted that the accused-petitioner would make himself available during trial. The further concern of the Court is whether the accused-petitioner would not indulge in the act of drugs trafficking.

13. The accused-petitioner, as could be found from the report, has been indulging himself in the drugs trafficking for a long period of time and he is prima facie found to be a habitual offender. On the basis of the materials on record, this Court is not convinced at all that the accused-petitioner would not commit any offence under the NDPS Act while

on bail. This Court being not convinced that he would not indulge himself in the illegal activities like trafficking in drugs or he would not commit any crime while on bail and that he would make himself available before the learned trial Court as and when required, is disinclined to release the accused-petitioner on bail and accordingly, this petition is rejected.

14. However, this Court would desire that the learned trial Court would expedite the trial of the aforesaid case for the ends of justice.

15. Registry is directed to send a copy of this order to the learned District & Sessions Judge, Sonitpur, Tezpur.