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In Re : Nelson Vincent

C.R.M. No. 2100 of 2009

Court: Calcutta High Court

Date of Decision: Feb. 27, 2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 439#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 20(b)(B), 29, 37

Citation: (2010) 6 RCR(Criminal) 2179

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Deep Chandra Kabir and Md. Musharrof Hossain, for the Appellant; Ashimes Goswami and Rita Dutta, for the Respondent

Final Decision: Allowed

Judgement

The Judgment of the Court was as follows:

1. This application has been taken out for enlarging the petitioner on bail on any condition that may be imposed by this Court.

2. The petitioner has been arraigned in a proceeding under sections 20(b)(B)/29 of the Narcotic Drugs and Psychotropic Substances Act. He has

been in custody for about 193 days. It appears from the record that investigation is complete and charge sheet has been submitted. However,

charge cannot be framed in view of the fact that another accused is absconding and necessary steps have been taken for arresting him to bring him

before the Court of Justice. Under such circumstances, the petitioner says that there is no possibility of the charge being framed and trial being held

at an early date; notwithstanding specific direction by this Court given earlier for consideration of framing charges in order dated 3rd February

2009.

3. Mr. Kabir, learned lawyer for the petitioner, complains that investigation is complete and it is for the fault of the prosecution for which

consideration of framing of charges was not done and matter was adjourned till 20th March 2009. Investigation is complete; there is no need for

further detention of the petitioner in custody. Only task left is to complete the trial but the same cannot take place until and unless charge is framed.

The petitioner is not at fault, so in terms of liberty, granted earlier by this Court, prayer for bail is renewed.

4. Mr. Goswami, learned Public Prosecutor, appearing for the State, seriously opposes the prayer for bail and submits that the substance involved

in this case is "Charas" and the seized quantity of the substance is 320 grams. It is contended by Mr. Goswami that it is not the quantity that has

been seized matters, subject-matter for the prosecution is that the accused is a peddler of this kind of substance and has been peddling at various

schools intending to affect school students. If this petitioner is enlarged on bail then there is reasonable apprehension that he will commit the same

offence again as he is a habitual trader. He further submits that while granting bail, the Court has to consider the balance between personal liberty,

as guaranteed under the Constitution, as also the police power for detention in custody for bringing the accused to justice. He further submits that

there is every chance of his absconding in the event he is enlarged on bail and reverting back to his old habit of trading such narcotic substance

which has become a menace to this society.

5. Mr. Goswami, in support of his submission, relied on a decision reported in Supreme To-Day 6th February, 2009 page 478 (Vaman Narain

Ghiya vs. State of Rajasthan).

6. Mr. Kabir, on the other hand, contends that no one can assume what a person will do after being enlarged on bail; whether he will commit

offence is a matter of assumption and for this police is duty bound to check or prevent any future crime being committed. The mechanism for

granting bail has struck a balance between personal liberty and custodial detention for securing attendance of the petitioner before the Court of law

at the time of trial.

7. We have considered the respective contention of the learned Counsels for the parties and it appears to us that the substance of 320 grams falls

far below the scheduled commercial quantity and it does not come within the purview of prohibitory provision of section 37 of the Narcotic Drugs

and Psychotropic Substances Act. Therefore, exercise of discretion of Court in the matter of granting bail, u/s 439 of Code of Criminal Procedure,

is not fettered by this Act. It appears to us that trial could not be commenced; even charge could not be framed, despite our earlier direction, for

no fault of the petitioner, because another accused is absconding, and for this, we think, another should not be made to suffer. The prosecution, in

that view of the matter, could have taken expeditious steps for splitting the trial to respect our order. When we do not see any possibility in near

future to get the same done, we are of the view, making prayer for granting bail on conditions, as may be imposed by this Court, is not

unreasonable one.

8. We have noted the observation of the Hon"ble Supreme Court in the aforesaid judgment, relied upon by Mr. Goswami. We think the ratio

decidendi of the aforesaid judgment has been illustrated in paragraphs 14 and 15 which is quoted below:

14. Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the

prisoners, and at the same time involves participation of the community in administration of justice.

15. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly

important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the

accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the

police to investigate the case. It has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded

from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental cannon

of criminal jurisprudence, viz, the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restrain,

the more restraint on others to keep off from us, the more liberty we have (See A.K. Gopatan vs. State of Madras, AIR 1950 SC 1000).

9. Keeping in view the aforesaid principle, while striking a balance between two diagonally paradoxical situation, we allow the prayer for bail with

the conditions as follows :

Let the petitioner find bail with two sureties of equivalent amount; one of whom must be local and production of proof of residence in Kolkata to

the satisfaction of learned Chief Judicial Magistrate, Alipore, on condition that he shall meet the Officer-in-Charge of the concerned police station

on every alternate day and he must inform the concerned Officer-in-Charge as to his whereabouts and availability on the days when he is not

supposed to report. In addition thereto, he shall deposit a sum of Rs. 20,000/- (Twenty thousand) as cash security and the same shall be kept

deposited with the learned trial Judge. In the event, he misuses the condition of bail, the aforesaid amount shall stand forfeited and in the event he

co-operates with the trial and complies with the directions and conditions put by this Court, then the aforesaid amount shall be refunded at the end

of trial irrespective of the result. Such deposit shall be made within two weeks from the date of the petitioner"s release from custody; failing which

this order will stand, recalled and the petitioner shall surrender. Above cash security is asked to be furnished to ensure attendance of accused and

as preventive measure against possible ascendance, as another accused is absconding.

He shall not try to influence or intimidate any person(s) who is/are required for the purpose of trial in this case in any manner whatsoever.