

(1989) 10 DEL CK 0023

Delhi High Court

Case No: Criminal Miscellaneous (Main) Appeal No. 371 of 1989

Jamesh W. Litchfield

APPELLANT

Vs

Narcotics Central Bureau

RESPONDENT

Date of Decision: Oct. 3, 1989

Acts Referred:

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

Citation: (1990) 40 DLT 97 : (1990) 18 DRJ 129 : (1990) 26 ECC 317 : (1990) 3 RCR(Criminal) 258

Hon'ble Judges: S. Duggal, J

Bench: Single Bench

Advocate: D.R. Sethi, Raman Sawhney and Satish Aggarwal, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The petitioner in this bail petition is accused of offences registered under Sections 8, 19, 21 and 29 of the Narcotics Drugs and Psychotropic Substance Act (for short the "Act"), Section 120 of the Indian Penal Code. The allegations against him are that he was found in possession of 10 grams of smack, 18 ampules of liquid which was subsequently identified as morphine and also some glass syringes, and six hypodermic needles. After detailed consideration of the contentions advanced on behalf of all the accused including the present petitioner a charge for the aforesaid offences has been framed, and the case has been "posted for prosecution evidence.

(2) This petition for bail is pressed mostly on the ground that the trial has not made much headway and that there are serious discrepancies in the prosecution case and even the Chemical analysis does not clearly indicate as to whether articles allegedly recovered from the possession of the petitioner fall within the definition of Heroin or Morphine within the contemplation of the aforesaid Act and further that the petitioner has been suffering from ill health during the period of his custody in jail.

It is, Therefore, prayed that the petitioner be ordered to be released on bail during the pendency of the trial.

(3) Mr. Sethi appearing for the petitioner reiterated all these arguments as set out and noted above. Mr. Satish Aggarwal appearing for the respondent on the other hand submitted that the petitioner is a Us national and that the requirement of securing his presence during trial is a very important consideration and as such, he ought not to be considered for bail in the midst of trial.

(4) Mr. Sethi reacted strongly in this plea on the ground that it could not be held as a rule that bail is to be declined to foreign nationals, and that suitable guarantee can be ensured, as a safeguard against apprehension expressed by the department.

(5) I have given my careful thought to the matter and have also gone through the decisions on which Mr. Sethi placed reliance in support of his plea for bail to the petitioner. The judgment on which he placed utmost reliance, is by a learned Single Judge of this Court, in the case of *Ashok Soleman v. State* 1988 (1) DL 407. holding that in the event of a trial being unduly protracted, the accused was entitled to be considered for bail, as it was not just and fair that he be left to incarcerate in jail, when the trial was likely to take long time to conclude.

(6) It is, pertinent to note that the petitioner in that case was not a foreign national and the learned Judge had that consideration in view while ordering release, because it is specifically noted in the judgment that the petitioner was being considered for bail for the reasons ; there is no cause for apprehension that the petitioner shall flee from justice or shall otherwise abuse the concession of bail, if allowed to him.

(7) This assurance cannot be had in the case of the present petitioner, as he has no stake in this country and there cannot be possibly any guarantee that he would remain available for trial, if ordered to be released on bail. Cases are not unknown where foreign nationals when allowed bail have absconded, and even in this case one of the accused who is a foreign national, has absconded. The other cases cited by Mr. Sethi, viz that of [Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna](#), and [Nimeon Sangma and Others Vs. Home Secretary, Government of Meghalaya and Others](#), stand entirely on different footing, and they were the cases where their Lordships took note of situation because persons under consideration there, had incarceration in jail for long years, and in some cases even more than the period of sentence which could normally have been awarded, even on their conviction and there were no such thing as apprehension of fleeing from justice. It was in that context that it was directed that they be released on bail. Even then in the later case, namely ; *Nimeon Sangma and Others* (supra) in cases of graver offences viz those under Sections 302 and 395 I Pc, the Supreme Court did not order release but gave time bound directions for expeditious trial.

(8) The case of [Kadra Pehadiya and Others Vs. State of Bihar](#), also pertained to young boys of about 12 or 13 years of age, who had been languishing in jail for over 8 years, but even in that case the order was only for time bound trial. It is thus not clear as to in what way this authority helps the petitioner.

(9) It is now well recognised consideration for declining bail in case there is any apprehension of an accused fleeing from justice, or absconding during trial which has been recognised unequivocally by the Supreme Court in the case of [State Vs. Jaspal Singh Gill](#), .

(10) In view of the above, I do not find it to be a fit case to allow bail to the petitioner. The questions raised on merits as to the Chemical analysis report or relating to seizure etc. are all questions which have to be gone by the trial court, and cannot be pre-judged at this stage. In case the petitioner suffers from any ailment, at any time he can be sent for treatment by the jail authorities in any hospital, and if necessary he can seek directions of the Court. He has already been allowed this facility by the trial court, on concession by the department, to have treatment in any hospital of his choice. Obviously the petitioner did not avail of that and insisted only on bail which insistence for obvious reasons cannot be countenanced.

(11) I, Therefore, find it to be a fit case where the petition is to be rejected for the reasons aforesaid. I, however, direct that the trial court shall adhere to strict time frame in the matter of trial, and shall proceed with all due expedition and see to it that long adjournments are avoided, and prosecution evidence is recorded on the dates fixed by him, and no evidence is sent back for paucity of time. In any case the trial should be concluded within a period of six months from the date the file is now put up before him. With these directions, the petition is dismissed. The trial court records be sent back immediately, with directions to be put up before the court on 6th October, 1989, on which date he shall fix as early as possible a date for prosecution evidence, after both the sides appear before him, and then proceed in terms of the directions given in this order. It is further directed that if the trial is not concluded within the time schedule as directed above, then the trial court shall submit a report explaining the reasons, for not being able to do so.