

CASE NO.:
Appeal (crl.) 907 of 2001

PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
KAJAD

DATE OF JUDGMENT: 06/09/2001

BENCH:
M.B. Shah & R.P. Sethi.

JUDGMENT:

SETHI, J.

Leave granted.

Acting upon a definite information received by the Police Station Jawad, District Neemuch, Madhya Pradesh, force was deployed and the respondent-accused apprehended on the night of 24th March, 2000. After compliance of the mandatory provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called "the Act"), opium weighing 7 kgs. was seized from the accused which he had kept in his bag. After completing necessary procedural formalities and getting the samples tested, a charge-sheet was submitted against the accused in the competent court. Application for bail moved by the accused was rejected by the trial court. Dissatisfied with the rejection of his bail application, the respondent-accused moved an application in the High Court which was registered as Miscellaneous Criminal Case No.2052 of 2000. The said application was rejected by the High Court vide order dated 5.6.2000. Without mentioning any change in the circumstances, the respondent-accused moved another application in the High Court in the month of August, 2000 which was adjourned from time to time and ultimately allowed vide the order impugned in this appeal.

Learned counsel appearing for the appellant-State has contended that the High Court has committed an error of law by granting bail to the respondent-accused ignoring the provisions of Section 37 of the Act, though merely making a mention of it in the impugned order. It is further contended that in the facts and circumstances of the case, the High Court was not justified in granting the bail to the accused in view of the dismissal of his earlier bail application and in the absence of any change in the circumstances. The learned Judge granting the bail is stated to have adopted a casual approach in dealing with a heinous crime committed under the Act. It is submitted that the order granting the bail amounts to reviewing the earlier order which is not permissible in criminal cases.

It is not disputed that the accused was apprehended and charged for the commission of an offence punishable under Section 18 of the Act which is punishable with rigorous imprisonment for a term, not less than 10 years but which may extend to 20 years and is also liable to a fine of not less than one lakh rupees.

Section 37 of the Act provides that the offences under the Act shall be cognizable and non-bailable. It reads:

"Offences to be cognizable and non-bailable- (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless--

i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, or granting of bail."

The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

In Maktool Singh Vs. State of Punjab (1999 (3) SCC 321) this Court considered the scope of Section 37 along with the scheme of the Act and held:

"The only offences exempted from the purview of the aforesaid rigours on the bail provisions are those under Sections 26 and 27 of the Act. The former is punishable upto a maximum imprisonment for three years and the latter upto a maximum imprisonment for one year. For all other offences, the court's power to release an accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence."

To the same effect are the judgments of this Court in Intelligence Officer, Narcotics Control Bureau Vs. Sambhu Sonkar and Anr. (JT 2001(2) SC 372) and Smt. D. Sarojini Vs. State of A.P. (2001(4) Supreme 179).

In the instant case, the learned Single Judge of the High Court has granted the bail on his own sense of observation regarding the course of conduct adopted by the accused at the time of his interception and arrest. Merely because the accused was found to be continuing to hold bag containing opium during the period, the raiding party searched him in accordance with the provisions of the Act, the learned Judge was not justified to conclude "it is by itself unnatural". How the learned Judge concluded that the conduct of the accused or raiding party were unnatural is not discernible from the impugned order. A person, apprehended by a raiding party, who is sought to be searched is supposed to hold the goods in his possession unless he opts to flee from the place of occurrence or advised to throw the container in which the offending substance is contained. Section 37 of the Act has been referred in the impugned order not for the purposes of showing of its compliance but to justify the passing of an apparently wrong order. If, besides referring to Section 37 of the Act, the learned Judge would have referred to its provisions, he would not have fallen a prey to the ulterior designs of the respondent-accused.

It has further to be noted that the factum of the rejection of his earlier bail application bearing Misc. case No. 2052 of 2000 on 5.6.2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa & Anr. [2001 (1) SCC 169] and various other judgments.

We are satisfied that the impugned order having been passed in violation of the provisions of the Act by ignoring the mandatory requirements of Section 37 and the conditions governing the grant of bail under the Code of Criminal Procedure and is thus not sustainable. Accordingly, the appeal is allowed by setting aside the order impugned. The respondent-accused shall surrender and his bail bonds are cancelled. He shall be taken into custody during the trial of the offence with which he has been charged.

.....J.
(M.B. SHAH)

.....J.
(R.P. SETHI)

SEPTEMBER 6, 2001