

CASE NO.:
Appeal (crl.) 312 of 2004

PETITIONER:
Customs, New Delhi

RESPONDENT:
Ahmadalieva Nodira

DATE OF JUDGMENT: 11/03/2004

BENCH:
S. RAJENDRA BABU, ARIJIT PASAYAT & G.P. MATHUR

JUDGMENT:
J U D G M E N T
Arising out of SLP (Crl.) No.4169 of 2002

ARIJIT PASAYAT, J.

Leave granted.

Grant of bail to the respondent (hereinafter referred to as 'the accused') by a learned Single Judge, of the Delhi High Court is questioned by the Customs authorities who had purportedly recovered huge quantity of "Diazepam" - 5 mg." Tablets from her.

Factual background necessary to be noted is as follows:

On 4.4.2000 Customs authorities detained the respondent-accused, a Uzbek national who came to India to do business in garments and was found carrying large quantity of "Diazepam" - 5 mg. tablets". In the statement recorded under Section 67 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short 'the NDPS Act') recovery of tablets was admitted by the accused. She was arrested on 5.4.2000. An application for bail was file before the Special Court, NDPS Act which was rejected taking into account of the embargo placed under Section 37 of the Act. The accused-respondent filed an application for bail under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code'). The stand taken essentially was that he tablets seized were not "psychotropic substance" within the definition of the term in the Act. The application was opposed by the detaining authorities on the ground that the article in question was covered by Serial no. 43 of the Schedule to the Act, the export production manufacture, possession etc. which are prohibited under Section 8 of the Act. The High Court was of the view that no definite material was placed to show the materials allegedly recovered conforms to the chemical name mentioned in the Item no.43 of the Schedule to the Act, and, therefore, cannot be treated to be a psychotropic substance. Report of the Central Control Laboratory which was placed for consideration was held to be of no consequence. Accordingly bail was granted to the respondent on her furnishing personal bond for a sum of Rs.1,00,000/- with one surety for the like amount to the satisfaction of the Trial Court. It was further stipulated that the respondent-

accused was not to leave the jurisdiction of the Trial Court without prior permission from that Court.

In support of the appeal, Mr. K.K. Sood, learned Additional Solicitor General, submitted that approach of the High Court is clearly erroneous and overlooks the restrictions and limitations imposed by Section 37 of the NDPS Act. With reference to serial no.43 of the Schedule to the Act it is submitted that not only the seized articles conform to the description but also the laboratory reports evidentiary value was totally overlooked. There is no appearance for the respondent-accused in spite of the notice.

It would be appropriate to take note of few provisions which have relevance. Section 2(xxiii) defining "psychotropic substances" and Section 37 dealing with bail read as follows:

Section 2(xxiii)

"psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule.

Section 37:

Offences to be cognizable and non-bailable -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

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(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 limitation 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 (2 of 1974) or any other law for the time being in force on granting of bail."

As observed by this Court in Union of India v. Thamisharasi & Ors. (JT 1995 (4) SC 253) clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two

limitations are (1) an opportunity to the public prosecutor to oppose the bail application and (2) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused-respondent is concerned, are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37. It did not take note of the confessional statement recorded under Section 67 of the Act. Description Serial no.43 of the Schedule which reads as follows has not been kept in view.

Sl. No.	International non-proprietary	Other non-proprietary	Chemical name
.....			
43	DIAZEPAM		7-Chloro-1, 3-dihydro-1-methyl-5-phenyl-2H-1
4-benzondiazepin-2-one			
.....			

In addition, the report of the Central Revenue Control Laboratory was brought to the notice of the High Court. The same was lightly brushed aside without any justifiable reason.

In the aforesaid background, this does not appear to be a case where it could be reasonably believed that the accused was not guilty of the alleged offence. Therefore, the grant of bail to the accused was not called for. The impugned order granting bail is set aside and the bail granted is cancelled. The accused-respondent is directed to surrender to custody forthwith. Additionally it shall be open to the Trial Court to issue notice to the surety and in case the accused does not surrender to custody, as directed, to pass appropriate orders so far as the surety and the amount of security are concerned. It is made clear that no final opinion on the merit of the case has been expressed in this judgment, and whatever has been stated is the background of Section 37 of the Act for the purpose of bail.

The appeal is allowed.

JUDIS