

CASE NO.:
Appeal (crl.) 349 of 2004

PETITIONER:
Narcotics Control Bureau

RESPONDENT:
Dilip Pralhad Namade

DATE OF JUDGMENT: 18/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

O R D E R

(Arising out of SLP (Crl.) No. 2783/2003)

ARIJIT PASAYAT, J

Leave granted.

Grant of bail to the respondent by a learned Single judge of Bombay High Court is questioned by the Narcotics Control Bureau (in short the "NCB"). The respondent is facing trial for alleged commission of offences punishable under Section 29 read with Sections 8(c), 22, 28 and 30 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). The allegations against the respondent Dilip Pralhad Namade (hereinafter referred to as 'the accused') were that he was involved in the manufacturing of mandrax tablets and he is the person who has supplied the technical know how of preparation for the tablets.

Officers of the appellant- Bureau, Mumbai Zonal Unit, got information that one Suresh Faturmal Jain was travelling in a red Ford Escort car and was carrying 20,000 Mandrax Tablets to be delivered to two persons at a particular place. Acting on the information, two officers of the Bureau went to the vicinity of the place where the tablets were to be delivered. Two persons were called to act as Panchas. They found that there were three persons travelling in the car. The officers searched the car and arrested all the three occupants. One of them were Suresh Faturmal Jain and others were Karakutti Karan Anthony and Rajeev Shirook. From the bags, 20 Kgm. of Mandrax Tablets were recovered. Statement of all the three accused persons were recorded and on the basis of certain facts disclosed in the statements, a search was taken up by the Officers and 650 Kgs. of chemicals used for manufacturing Mandrax tablets were recovered. During the course of investigation, other persons were also searched and enquiries were made. The case against the respondent-accused was that he was instrumental in helping the other accused persons in setting up a plant and machinery for manufacture of Methaqualone Powder and Mandrax Tablets. With the help of others, the

respondent alongwith accused No. 10 manufactured eleven lakhs Mandrax tablets on three occasions for other accused persons. He had also visited the factory of accused No. 13 for the purpose of procurement of the Mandrax Tableting Machineries etc.

A bail application was filed by the respondent-accused, which was rejected on 27.8.2001 by the Special judge. Subsequently an application was filed on 21.6.2002 before the Special Judge for direction to the prosecuting agency to supply copies of certain documents purported to have been recovered from his house. The Special Judge directed the prosecution to furnish the copies.

Subsequently an application for bail was filed by the respondent-accused before the Bombay High Court on 27.8.2002. By the Impugned order dated 19.12.2002 the High Court granted bail to the respondent-accused primarily on the term that the direction given by the Special Judge for supply of copies of documents was not complied with, though the bail application was opposed.

In support of the appeal Mr. L. Nageshwara Rao, learned Additional Solicitor General submitted that while granting bail the provisions of Section 37 of the Act were not kept in view. There is a prohibition on the grant of bail in terms of Section 37 of the NDPS Act and only under the specified conditions bail can be granted. Non-supply of documents pursuant to the court's order is not one of the grounds on which bail can be granted. In fact the High Court recorded a wrong conclusion by observing that the order was not complied with and there was also no challenge to the order directing supply of documents. As a matter of fact claiming privilege the Bureau had filed an application before the Special Judge clearly indicating that it would not be in the interest of justice to grant copies, and prayer was made to the Court that instead of granting copies the accused, if he so desires, could inspect the documents in presence of officials of the Bureau. That offer was not accepted by the accused respondent. The Bureau wanted to avoid the possibility of any tampering with the original documents and also further dissemination of the formula in public and that is why inspection, as indicated above was offered. The accused having not chosen to inspect the documents could not have made a grievance about non-supply of copies or alleged non-compliance of the directions of the learned Special Judge.

Per contra Mr. E.C. Agrarwala, learned counsel appearing for the respondent-accused submitted that stand taken by the appellant-Bureau is nothing but a camouflage to hide its inaction and non-compliance with the orders of the Special Judge. There was a specific direction for supply of copies and there is no ground indicated to substantiate the claim of privilege. In any event, the order granting bail was passed on 19.12.2002 and this Court was approached in May 2003 and in the meantime nearly 1= years have elapsed without any allegations of the respondent-accused having misused his liberties. He submitted that in two cases i.e. SLP (Cr1.) No. 1136/2002

(N.C.B. vs. Amar Pal Singh) and SLP(Cr1.) No. 434/2003, (N.C.B. vs. Smt. Hamida Sayyed Ali Shaikh) this Court did not interfere with order granting bail on the sole ground of long passage of time. Therefore, it is submitted that liberty granted to the respondent-accused should not be withdrawn.

It would be appropriate to take note of few provisions which have relevance i.e. Section 2(xxiii) defining "psychotropic substances", and Section 37 dealing with

bail. They 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),

(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 and he is not likely to commit any offence while on bail. This nature of embargo seems to have been envisaged keeping in view the deleterious nature of the offence, necessitates of public interest and the normal tendencies of the persons involved in such network to pursue their activities with greater vigour and make hay when, at large. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37 and transgressed the limitations statutorily imposed in allowing bail. It did not take note of the confessional statement recorded under Section 67 of the Act.

A bare reading of the impugned judgment shows that the scope and ambit of Section 37 of the NDPS Act was not kept in view by the High Court. Mere non-compliance of the order passed for supply of copies, if any, cannot as in the instant case entitle an accused to get bail notwithstanding prohibitions contained in Section 37.

The circumstances under which the bail can be granted in the background of Section 37 have been indicated above.

The case is not one to which the exceptions provided in Section 37 can be applied.

Coming to the plea regarding long passage of time it is to be noted that the two orders passed by this Court in SLP (crl.) Nos. 1136/2002 and 434/2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. (see Union of India and others vs. Jaipal Singh 2003(7) Supreme 676). This court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage (see Kunhayammed and others vs. State of Kerala and another (2000)6 SCC 359) and Sri Ramnik Vallabhdas Madvane and Ors. vs. Taraben Pravinlal Madhvani 2003 (8) Supreme 208).

The inevitable conclusion is that the judgment has no legal sanction. We, therefore, set aside the impugned judgment of the High Court granting bail to the respondent. The respondent-accused is directed to surrender to custody forthwith.

Appeal is allowed.