

Dr. Bipin Shantilal Panchal

Vs

State of Gujarat

Criminal Appeal No. 26 of 1996

(CJI A.M. Ahmadi, B.P. Jeevan Reddy, N.P. Singh JJ)

08.01.1996

JUDGEMENT

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N. P. SINGH, J.:-

1. Leave granted.

2. This appeal has been filed against an order dated 19-4-1994 passed by the High Court, rejecting the prayer of the bail, made on behalf of the appellant, who is an accused for offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the N.D.P.S. Act).

3. It appears that the appellant was arrested on 8-11-1993. A petition for bail on merit was rejected by the City Sessions Judge on 4-2-1994 in view of the judgment of this Court in the case of Narcotics Control Bureau v. Kishan Lal, AIR 1991 SC 558 : (1991) 1 SCC 705, taking into consideration Section 37 of the said Act. The High Court also rejected the prayer for bail, made on behalf of the appellant, in view of Section 37 of the Act, after making reference to the judgment of this Court in the case of Narcotics Control Bureau v. Kishan Lal (supra).

4. The learned counsel, appearing for the appellant, urged that the statutory period prescribed by proviso (a) to sub-section (2) of Section 167 of Code of Criminal Procedure during which the appellant could have been kept in custody, pending investigation, had expired, because of which the appellant should have been released on bail and at that stage there was no question of application of Section 37 of the Act. Recently, this Court has considered the question of applicability of proviso to sub-section (2) of Section 167 of the Code in respect of an accused under N.D.P.S. Act in the case of Union of India v. Thamisharasi (1995) 4 J.T.(SC) 253 : (1995 AIR SCW 2543) and it has been held that Section 37 does not exclude the application of the proviso to sub-section (2) of Section 167 of the Code, even in respect of persons who are accused for offences under N.D.P.S. Act. But it is an admitted position that the charge-sheet has been filed on 23-5-1994 and now the appellant is in custody on the basis of orders of remand passed under the other provisions of the Code. Whether the accused who was entitled to be released on bail under proviso to sub-section (2) of Section 167 of the Code, not having made an application when such right had accrued, can exercise that right at a later stage of the proceeding, has been examined by a Constitution Bench of this Court in the case of Sanjay Dutt v. State through C.B.I. Bombay (II), (1994) 5 SCC 410 : (1994 AIR SCW 3857 at pp. 3890-91) and it has been said :

"The "indefeasible right" of the accused to be released on bail in accordance with

Section 20(4)(bb) of the TADA Act read with Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur* is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing if within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage".

Therefore, if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge-sheet is filed. But on the other hand if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge-sheet, as pointed out in *Aslam Babalal Desai v. State of Maharashtra*, (1992) 4 SCC 272 : (1992 AIR SCW 2621)

5. The learned counsel, appearing for the appellant, did not press the appeal on merit, saying that in the facts and circumstances of the case, the City Sessions Judge, should have held that there were reasonable grounds for believing that the appellant was not guilty of any offence under that Act, as required by sub-section (1) (b) (ii) of Section 37. Accordingly, the appeal fails and it is dismissed. However, we direct that the trial of the appellant be expedited. Appeal dismissed.