

Union of India

Vs

Ram Samujh

Criminal Appeal No. 866 of 1999

(K. T.Thomas, R. B. Shah JJ)

30.08.1999

JUDGMENT

R.B. Shah, J. –

1. Leave granted.

2. As respondent No. 1 has not engaged any counsel, the Registry was directed to appoint and advocate as *amicu curiae*. We have heard the learned counsel for the parties. Only question involved in this appeal is whether the order passed by the High Court of Judicature at Allahabad, Lucknow Bench, granting bail to the respondent No. 1 Ram Samujh Yadav requires to be set aside on the ground that the High Court ignored the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act. 1985 (hereinafter referred to as "NDPS Act") as well as the law laid down by this Court.

3. It is alleged by the prosecution that on 21st May, 1997, a raid by the authorities of the Narcotic Department was carried out at the tubewell house of Respondent No. 1 and 5 kg of Opium was recovered. The Sessions Judge by the detail reasoned order dated 11th July, 1997 rejected the bail application after hearing Special Public Prosecutor (Narcotics) and considering the material on record.

4. The High Court granted bail by a cryptic order dated 20th August, 1998 which is extracted below :-

"The applicant is in jail since 22.5.1997 and trial has not concluded.

Applicant Ram Samujh is admitted to bail in case crime No. 15 of 97, under sections 8/18 N.D.P.S. Act, P.S. Kotwali, Barabanki, district Barabanki, on his furnishing a personal bond and two sureties, each in the like amount to the satisfaction of Special Judge (N.D.P.S. Act), Barabanki and on the condition that the applicant shall report at the Police Station on first and sixteenth of every month till the trial lasts."

5. The jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of the NDPS Act. It can be granted in case where there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. It is the mandate of the legislature while is required to be followed. At this juncture a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus :

"37. 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 to 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 or any other law for the time being in force, on granting bail."

6. The aforesaid Section is incorporated to achieve the object as mentioned in the Statements of Objects and Reasons for introducing the Bill No. 125/1988 thus :

"Even though the major offences are non-bailable by virtue of the level of punishment, on technical grounds, *drug offenders were being released on bail*. In the light of certain difficulties faced in the enforcement of NDPS Act, 1985 the need to amend the law to further strengthen it, has been felt."

7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable; it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secretary, Union Territory of Goa, 1990(1) SCC 95* as under :-

"With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1995 specifying mandatory minimum imprisonment and fine."

8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended.

9. In the result, appeal is allowed. The impugned Order dated 20th August, 1998 passed by the High Court of Judicature at Allahabad, Lucknow Bench, releasing the respondent No.1. Ram Samujh is quashed and set aside. Respondent No.1 is directed to surrender.