

**SUPREME COURT OF INDIA**

CBI

Vs.

Dhan Singh

(Y.K. Sabharwal and H.K. Sema JJ.)

13.03.2003

**ORDER**

1. Leave granted.

2. The appellant CBI is aggrieved by the impugned judgment of the High Court dated 29-1-2002 enlarging the respondent-accused on bail in connection with a case under the Narcotic Drugs and Psychotropic Substances Act ("the Act" in short).

3. The impugned order notices that the respondent has sought bail in connection with Tejpur Police Station Case No. 211 of 1994 under Section 20 of the Act and CBI Case No. RC-6/96-SIU, XI/CBI/New Delhi pending in the Court of Special Judge, Sonitpur, Tejpur. The impugned order further notices that charge under Section 20(b) of the Act has been framed against the respondent of which the maximum punishment is five years.

4. On both counts the High Court is factually not correct. The respondent had been charged not only for offence under Section 20(b), but also for offence under Section 25 of the Act in terms of the order of the Special Judge dated 27-9-2001 whereby the charge has been amended. The maximum punishment of the offence of which the respondent had been charged was 10 years and not five years.

5. Section 37 of the Act is mandatory. Before grant of bail the ingredients mentioned therein are required to be examined and bail granted only when the applicant fulfils the conditions stipulated in Section 37. Section 37 was not at all adverted to by the High Court. We may note that the bail granted to the respondent by the Special Judge on 23-4-2001 was cancelled on 29-6-2001 by the Special Judge. Another bail application was rejected on 28-8-2001. On 8-10-2001, the High Court rejected the petition seeking bail. In the said order reference was made to the stringent provisions of Section 37 of the Act. Despite this background and without adverting to Section 37 the High Court decided to grant bail and we say no more, except that some irrelevant matters have been noticed in the order, namely, the respondent having telephone and ration card etc.

6. Under the aforesaid circumstances, we allow the appeal and set aside the impugned judgment of the High Court dated 29-1-2002 and direct that the respondent shall be taken into custody forthwith.