

SUPREME COURT OF INDIA

Union of India

Vs.

Mahaboob Alam

Crl.A.No.288 of 2004

(N.Santosh Hegde and B. P. Singh JJ.)

27.02.2004

JUDGMENT

N. Santosh Hegde, J.

1. Leave granted.

2. The respondent herein was convicted by the Special Judge, N.D.P.S. Court, Lucknow, under section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act) and since he was a previous offender, the court awarded him the enhanced punishment provided under section 31 of the Act and he was sentenced to undergo RI for 15 years with a fine of Rs.1,50,000; in default to undergo RI for an additional period of 2 years. It is to be noted that the respondent herein was accused No.2 in the said case before the trial court while A-1 being a first offender was sentenced under section 21 of the Act to undergo RI for 10 years with a fine of Rs.1 lakh; in default of payment of fine he was sentenced to undergo RI for an additional period of 1 year.

3. The High Court while entertaining an appeal against the said judgment and conviction filed by the respondent herein, did not grant the respondent's prayer for bail, consequently the said application for bail was rejected on 9.7.2002. On a second application filed by the respondent for grant of bail, the High Court allowed the said application by the impugned order dated 4.3.2003 solely on the ground that A-1 from whom the contraband was recovered, was released on bail and the contraband in question was not recovered from the respondent. From the impugned judgment we notice that the High Court did not advert to any other aspect of the case nor to the legal restriction imposed by the statute under section 32A of the Act.

4. The Union of India has preferred the above appeal against the said order of the High Court enlarging the respondent on bail.

5. It is relevant to mention herein that against the grant of bail in regard to A-1 who was also enlarged on bail and whose enlargement on bail was made the sole ground for enlarging the

present respondent bail, the Union of India has preferred a separate SLP in which notice and non-bailable warrants have been issued by this Court which have remained unexecuted till date. The fact remains that the Union of India has challenged the grant of bail to said accused also.

6. Learned Additional Solicitor General appearing for the Union of India contended that the High Court apart from not considering the mandatory restriction under section 32A of the Act, did not also notice the fact that the respondent was a previous offender and there were at least 4 other similar cases pending against him under the Act. The High Court also did not consider the possibility of the offender again indulging in the dealings of contraband articles in the event of he being released on bail which is also a very relevant factor to be borne in mind while granting bail in cases involving offences under the Act. He further contended that the respondent having suffered a conviction, there is a presumption that the prosecution has established its case against him in that circumstance, it was not proper for the High Court to have enlarged the respondent on bail. Learned counsel also submitted that the High Court failed to take into consideration various judgments of this Court in regard to enlarging the offenders on bail under the Act.

7. Per contra, learned counsel for the respondent contended that the respondent is a victim of conspiracy hatched by the Department of Narcotics and the Police because in the year 1995, he had made a complaint to the Superintendent of Police that some of the Police Officers had illegally detained him and had demanded and collected a sum of Rs.50,000 for his release. It is because of that complaint made by the respondent, the Police and the officials of the Department of Narcotics are foisting false cases against the respondent. He also contended that in the present case as well as in other cases also no contraband goods have been recovered from the respondent and that the respondent has served nearly 4 years of his sentence, and there is no possibility of the appeal being taken up for final hearing in the near future, hence, the High Court was justified in granting bail to the respondent.

8. In the case of *Dadu alias Tulsidas etc. v. State of Maharashtra*), this Court held that though a part of section 32-A insofar as it ousts the jurisdiction of the court to suspend the sentence awarded to the convict under the Act is unconstitutional, still held that the whole of the section would not be invalid and the restriction imposed by the offending section was distinct and severable. It further held that the legislative mandate under that Section has to be followed by the courts while granting bail to the offenders under the Act. It also held that the court should bear in mind "that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a 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." In the said judgment also relied on the following passage with approval in the case of *Durand Didier v. Chief Secretary, Union Territory of Goa*) in the following words :

"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 sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions 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, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

9. Following the above dangerous trend arising out of narcotics trade, this Court in the said case held though the court has the power of granting bail inspite of the language of section 32-A that the same should be done only and strictly subject to the conditions spelt out in section 37 of the Act.

10. We notice that in the impugned judgment there has been absolutely no application of mind to the above requirement of law while granting bail to the respondent and the learned Judge seriously erred in granting bail to a repeat offender merely on the ground that a co-accused has been granted bail. While doing so, the learned Judge has totally ignored the legislative intent of the Act.

11. The argument of learned counsel for the respondent that the appellant is a victim of vengeance, is an argument to be taken note of by the High Court when it hears the appeal on merit, and cannot be an argument for the purpose of grant of bail; more so when the trial court has taken note of this argument and has rejected the same.

12. Having perused the records, we are satisfied that this is not a case in which the High Court ought to have enlarged the respondent on bail.

13. For the reasons stated above, we allow this appeal, set aside the impugned order. The respondent who is in custody by virtue of the non-bailable warrants issued by this Court, shall continue to be in custody unless for good reasons, he is enlarged on bail by a competent court.