

# SUPREME COURT OF INDIA

Union of India

Vs.

Abdulla

Crl.A.No.540 of 2003

(N. Santosh Hegde and S. B. Sinha JJ.)

21.09.2004

## JUDGMENT

### **N.Santosh Hegde, J.**

1. The respondent herein was charged for the offences punishable under Sections 8/21/29/60 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* before the Court of Special Judge, Lucknow. His application for grant of bail pending trial came to be rejected by the said Special Judge as per his order dated 20th February, 2001. The learned Judge came to the conclusion that prima facie the prosecution allegation against the respondent stands established hence the respondent is not entitled for bail. He has given reasons for coming to that conclusion. In a criminal miscellaneous case filed before the High Court of Judicature at Allahabad by the respondent for grant of bail the High Court by the following order granted bail:

"Perused the record. It is a fit case for bail.

Let accused-applicant Abdulla involved in Crl. Case No.219/99 of 2001 under Sections 8/21/29/60 N.D.P.S. Act, Lucknow be released on bail on his furnishing a personal bond with two sureties each of the like amount to the satisfaction of Special Judge (E.C. Act) Lucknow."

2. The learned counsel appearing for the appellant contended that in view of Section 37 of the Act it is mandatory for the learned Judge firstly to hear the public prosecutor on the bail application and next to come to the conclusion that prima facie there is no case made out by the prosecution before granting bail. It is submitted that the High Court without applying its mind either to the facts of the case or Section 37 granted bail without even recording the mandatory satisfaction as to the existence of a prima facie case or not. We are in agreement with the said argument of the learned counsel for the appellant.

3. The learned counsel appearing for the respondent contended that a detailed objection was filed by the prosecution which was considered and after considering the arguments of the

parties and noticing the deficiency in the prosecution case the Court came to the conclusion that it was a fit case for grant of bail. He also points out that on the facts and circumstances of this case Section 37 of the Act as amended is not applicable. This fact which is now argued before us does not find reference in the impugned order nor do we find any reference to Section 37 of the Act which shows that the learned Judge has not noticed the mandatory requirement for granting bail in matters arising out of the Act. Therefore, we allow this appeal and set aside the impugned order and remand this matter back to the High Court for fresh disposal in accordance with law.

4. The appeal is allowed.

Criminal Appeal No. 247/2004.

5. The respondent herein was charged of the offences punishable under Sections 8/21/29/60 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* before the Court of Special Judge, Lucknow. His application for grant of bail was rejected by the Special Judge by assigning reasons thereof. Further application being made to the High Court of Judicature at Allahabad the High Court without considering the mandatory requirement of Section 37 of the Act and without coming to the prima facie conclusion that there was no material against the respondent to convict him for the charges alleged against him mechanically proceeded to grant the bail. This Court in the case of *Supdt. Narcotics Control Bureau, Chennai vs. R. Paulsamy*<sup>1</sup> has held that in matters arising out of the Narcotic Drugs and Psychotropic Substances Act grant of bail is controlled by Section 37 of the Act and it is mandatory for the Court to hear the public prosecutor and come to the prima facie conclusion there is no material to come to the conclusion that the accused could be held guilty of the charges levelled against him. Since such a conclusion is not recorded by the High Court and is not supported by the reasons we think the impugned order cannot be sustained.

6. For the above reasons the appeal succeeds and the impugned order is set aside and matter is remanded back to the High Court for its disposal in accordance with law.

The appeal is allowed.

<sup>1</sup>2000(9) SCC 549