

# **SUPREME COURT OF INDIA**

Union of India

Vs.

Shri Shiv Shanker Kesari

Crl.A.No.1223 of 2007

(Dr. Arijit Pasayat and D.K. Jain JJ.)

14.09.2007

## **JUDGMENT**

**Dr. ARIJIT PASAYAT, J.**

1. Leave granted.

2. Challenge in this appeal is to the grant of bail by a learned Single Judge of the Allahabad High Court to the respondent who was charged for alleged commission of offence punishable under Sections 8, 15, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act'). Allegation was that he was found to be in possession of huge quantity of poppy straw. It is the case of the prosecution that the raiding party seized nearly 400 Kg. of poppy straw from the possession of the accused-respondent.

The prayer for bail made by the respondent was rejected by learned Special Judge (NDPS Act), Varanasi. The High Court by the impugned order accepted the prayer for bail on the ground that the recovery was not from the exclusive possession of the accused-respondent and other members of the family are involved in the case. It was noted that the respondent had no criminal history. Accordingly, the prayer for grant of bail was allowed.

3. According to learned counsel for the appellant the parameters of Section 37 of the Act have not been kept in view while accepting the prayer for grant of bail. It was pointed out that huge quantity of poppy straw was recovered from the possession of the respondent from house No.K.63/121, Gola Deena Nath, Varanasi. It is submitted that the prayer for bail was rejected by the District Judge in terms of Section 37 of the Act after elaborately dealing with the background facts. Bail can only be granted on fulfillment of two conditions i.e. (i) where there are reasonable grounds for believing that the accused is not guilty of the offence and (ii) that he is not likely to commit any offence while on bail. Learned Single Judge while accepting the prayer for bail has not recorded any finding that there are reasonable grounds for believing that the accused was not guilty. Further, no finding has been recorded that he is not likely to commit any offence while on bail.