

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: August 17, 2010
Date of Order 29th September, 2010

+ Crl.M.C.No. 54/2009 & Crl.M.A.No. 164/2009

%

29.09.2010

Narcotics Control Bureau

... Petitioner

Through: Mr. S.C.Aggarwala, Advocate

Versus

Nafe Singh & Anr.

... Respondents

Through: Mr. K.T.S.Tulsi, Sr. Advocate with
Mr. Sanjiv Kumar, Mr. S.K.Santoshi &
Mr. S.S.Dass, Advocates

+ Crl.M.C.No. 67/2009 & Crl.M.A.No. 211/2009

%

Narcotics Control Bureau

... Petitioner

Through: Mr. S.C.Aggarwala, Advocate

Versus

Amit Kohli & Anr.

... Respondents

Through: Mr. K.T.S.Tulsi, Sr. Advocate with
Mr. Sanjiv Kumar, Mr. S.K.Santoshi &
Mr. S.S.Dass, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

These two petitions have been filed by the petitioner Narcotics Control Bureau for cancellation of the bail of the respondents who were booked by the petitioner under Section 22, 23, 24 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act). The learned Special Judge, NDPS passed a detailed order in respect of the bail of Diwakar Gupta and Amit Kohli thereafter when the application of Nafe Singh and Rajesh Sharma came, he relied

upon his earlier order of Diwakar Gupta and granted bail to Nafe Singh and Rajesh Sharma also. Thus, the accused persons were granted bail vide orders dated December, 2008 and January, 2009.

2. As per allegations the accused persons were found in possession of tablets - Diazepam, Lorazepam, Alprazolam, Clonazepam & Phenobarbitone. The report of CSFL had shown that presence of hydrocodone and buprenorphine could not be detected. The learned Special Judge observed that remaining four tablets came under category of Schedule 'H' Drugs under the Drugs and Cosmetics Act and the list appended to NDPS Act but were not included in Schedule I of NDPS Rules. Therefore, general prohibition contained under Rule 64 of NDPS Rules would not apply. That being the case sale, manufacture and possession of drug was not prohibited and learned Special Judge relied upon *Rajinder Gupta v. NCT of Delhi (2005) 3 JCC 233*. He observed that accused persons had no criminal antecedents and they were in judicial custody for about 07 months so he allowed bail to the above respondents.

3. It is argued by the Counsel for the NCB that an appeal against Rajinder Gupta case (supra) was pending before the Supreme Court and judgment in Rajinder Gupta case had not attained finality and therefore reliance should not have been placed by the trial Court on this judgment. He submitted that drugs recovered from the respondents were covered under the NDPS Act and since recovery was of large number of tablets the appeal should have been rejected.

4. The learned Special Judge had taken into consideration the weight of narcotic substance present in each tablet and then multiplied it with the number of tablets recovered and came to the conclusion that the quantity of narcotic substance recovered from the respondent was not commercial quantity and was only an intermediary quantity. Regarding alleged export of these drugs by the respondents, NCB was still investigating on 179th day of the arrest and no charge-sheet had been

filed till grant of the bail, the maximum period during which the charge-sheet could be filed without extension of time was 180 days. Under these circumstances, respondents were released on bail.

5. Another factor to be noted in this case is that the accused persons were detained under preventive detention law by the order of the competent authority. They had assailed their detention order by way of a Writ petition before this Court and a Division bench of this Court allowed the Writ petition and preventive detention was quashed. An SLP filed by the department against the order of Division bench was dismissed.

6. The law regarding whether possession of these drugs would amount to an offence under NDPS Act is still in flux. I, therefore consider that it would be appropriate that the bail order passed by the learned Special Judge be not disturbed. In a similar case titled as Ramesh Kumar Samra v. Directorate of Revenue Intelligence, Criminal Appeal No. 1077 of 2007 decided by Supreme Court on 10th December, 2009, the Supreme Court observed as under:

“The Metropolitan Sessions Judge while granting the bail noted that the investigation was almost complete and therefore, directed the appellant to be released on bail on executing a bond for a sum of Rs.30,000/- with two sureties for like sum each to the satisfaction of this Court, subject to the condition that he shall appear before the Directorate of Revenue Intelligence, Hyderabad on the specified dates and timings. The said order was challenged by the Intelligence Officer on the ground that the order granting bail was contrary to the mandatory requirement of Section 37 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short ‘the NDPS Act’). The High Court upon appreciation of the material on record cancelled the bail on the ground that there is a prima facie material against the appellant and his brother involved in receiving the commercial quantity of the drug; transporting the drug in the form of tablets and capsules to the people; that the conditions prescribed under Section 37 of the NDPS Act were not complied by the Sessions Judge while granting bail.

Learned Counsel appearing for the appellant submitted that after release of the appellant on bail by the Metropolitan Sessions Judge, the appellant has been complying with the conditions subject to which he was directed to be released on bail.

The submission was that at this stage after a period of three years of grant of bail it may not be appropriate to send the appellant back to jail. Learned Additional Solicitor General appearing for the respondent, relying upon the judgment of this Court reported in 2007(1) SCC 355 titled State of Uttaranchal v. Rajesh Kumar Gupta submitted that the High Court did not commit any error whatsoever in cancelling the bail of the appellant and the impugned order is not required to be interfered with in exercise of the jurisdiction under Article 136 of the Constitution of India. We have considered the submissions.

The fact remains that the appellant herein was released by the Metropolitan Sessions Judge vide order dated 19.12.2006 and he continues to be on bail as of today. There is no allegation of the appellant indulging in any tampering and destroying the evidence. There is also no allegation that after release on bail the appellant indulged in any offence punishable under the NDPS Act. Therefore, it cannot be said that the appellant is likely to commit any offence while on bail.

Leaving the question of law open, we allow this appeal and set aside the impugned order passed by the High Court. The appellant shall continue to be on bail subject to the same terms and conditions on which the appellant was directed to be released on bail by the Metropolitan Sessions Judge.”

I, therefore dismiss these criminal petitions.

September 29, 2010

vn

SHIV NARAYAN DHINGRA, J.