

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.911 OF 2017

Sanjay Kumar Shrivastava	Applicant
versus	
The Intelligence Officer and another	Respondents

AND

CRIMINAL APPLICATION NO.912 OF 2017

Kaluram Chaudhary w/o Babulal Chaudhary	Applicant
versus	
Union of India and another	Respondents

Mr.Tarak Sayed i/by Sachin K. Shirke for Applicant in APL No.911 of 2017.

Mr.Anil G. Lalla i/by Lalla & Lalla for Applicant in APL No.912/2017.

Mr.Francis E. Saldhana for Respondent no.1 in both matters.

Mr.A.R.Kapadnis, APP, for State in APL No.911/2017.

Mr.H.J.Dedhia, APP, for State in APL No.912/2017.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th August 2017

PC :

1. The applicants in both these applications have challenged the order dated 22nd August 2017 passed by Special Judge for N.D.P.S. Cases, Mumbai in NDPS Special Case No.28 of 2016 @ 103/2016. The applicants in both these applications were arrested by the officers of Narcotic Control Bureau. They were produced before the Special Judge for NDPS cases at Mumbai from time to time and they continued to be in custody.

2. The intelligence officer of Directorate of Revenue Intelligence ('DRI') preferred an application before the Special Court seeking permission to record the statements of the applicants in both these applications. It was stated in the said application that the applicants have been party to manufacture of Mephedrone seized by Narcotic Control Bureau, Mumbai on 13th August 2015 and 14th August 2015 and their roles in the manufacture of psychotropic substance seized by DRI on 4th August 2017 is required to be probed by DRI. Hence it was prayed that necessary permission be granted to record their statements on 23rd August 2017 and 24th August 2017. The said application was preferred on 18th August 2017. The applicants filed say to the said application. In the say it was contended that the applicants are facing the prosecution in NDPS Special Case No.28 of 2016 @ 103 of 2016. It was further stated that they are not concerned with the case which is purportedly effected by DRI. The applicants were willing to give their true and voluntary statements in the presence of their advocate in view of law laid down by Supreme Court in the case of Senior Intelligence Officer Vs. Jugal Kishor Samra reported in 2011(12)-SCC-362.1 It was further submitted that they are not concerned with the seizure and they apprehend third degree treatment at the hands of DRI officials, who would forcibly extort the confession. It was also stated that they intend to exercise their right of silence, however, they are willing to co-operate with the investigation. It was further contended that in view of law laid down by the Hon'ble Supreme Court in D.K.Basu and Jugal Kishor Samra, the statements of applicants be recorded in the presence of their advocates.

3. Learned Special Judge vide order dated 22nd August 2017 rejected the prayer made by the applicants to record their statements in presence of their advocates. However, directions were issued to the investigating agency that before recording of statements of the applicants, the intelligence officers shall get the applicants medically examined from the Government Medical Officer and again after recording of their statements, they shall be medically examined from the Government Medical Officer.

4. The applicants have filed present applications before this Court being aggrieved by the said order. It is submitted by learned counsel for applicants that they are apprehending third degree treatment at the instance of DRI officials. It is submitted that they are in custody for a long period of time in connection with the case investigated by Narcotic Control Bureau, which is pending before the Special Judge for NDPS cases at Mumbai. The applicants were not connected with the crime investigated by DRI, but still they want to co-operate with the investigation. It is submitted that the DRI is conducting investigation in case registered against other persons. They were arrested and were produced before the Court of NDPS Special Judge at Thane. The said accused had allegedly disclosed involvement of applicants. The names of the said accused included brother and wife of the applicant Sanjay Srivastava, Ramakrishna Nerne and Sonaram Chaudhary. It is submitted that wife and brother of the applicant in Criminal Application No.911 of 2017 were subjected to ill-treatment by DRI officials, which fact was brought to the notice on the day they were produced before the Special Court for NDPS cases for remand before the Special Court, at Thane. It is further submitted that the

co-accused Ramkrishna Narne (accused no.4) and Sonaram Choudhary (accused no.3) had filed retraction applications before NDPS Special Court, at Thane in which it was mentioned that they were tortured mentally by DRI officials and subjected to physical assault. In the application preferred by accused no.4, it was further stated that the statement attributed to him was taken by force and coercion and therefore they retracted the statement. In the application filed by Sonaram Chaudhary it was stated that he was beaten by DRI officials and subjected to third degree methods. It is further stated that officers had threatened the said accused that in case he makes complaint to Court, he will be assaulted and therefore he had no courage to file his retraction statement at the earlier point of time.

5. Learned counsel for applicants relied upon several decisions of Supreme Court of India as well as this Court and submitted that permission as sought for, can be granted in the light of Article 21 of the Constitution of India. Reliance was placed on the judgment of Supreme Court in the case of D.K.Basu Vs. State of Bangal reported in (1997)1-SCC-416. In paragraph 35 of the said decision, directions were issued by Supreme Court to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures. Clause-10 of the said requirements stipulated in paragraph 35 mentions that the arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. In paragraph 30 of the said decision, it is observed that apart from Police, there are other other governmental agencies like DRI, Directorate of Enforcement, Coastal Guard, CRPF, BSF, CISF, CBI, CID etc. who conduct the investigation. It is therefore

submitted that the directions are applicable even to the present investigating agency.

6. Reliance was also placed on other decision of Supreme Court in case of Ashadevi Vs. K.Shivraj reported in 1979-Cri.L.J.-203 as well as in the case of Smt.Nandini Satpathy Vs. PL.Dani and another reported in 1978-Cri.L.J.-968. The learned counsel further relied upon the decision of Supreme Court in the case of Senior Intelligence Officer Vs. Jugal Kishor Samra reported in 2011(12)-SCC-362. In paragraph 28 of the said decision it was observed that taking a cue from the directions made in D.K.Basu and having regard to the special facts and circumstances of the case, the Court found it appropriate to direct that the interrogation of the respondent therein may be held within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorized by the respondent therein may watch the proceedings from a distance or from beyond a glass partition but he will not be within the hearing distance and it will not be open to the respondent therein to have consultations with him in course of interrogation.

7. Learned counsel also pointed out another decision of this Court in case of Abdul Rajak Haji Mohammed Vs. Union of India and others reported in 1986-Cri.L.J.-2018. In paragraph 18 of the said decision it was observed that on reading of Article 20(3) and Article 22(1) of Constitution of India, it is clear that an accused person is entitled to the presence of his advocate during his interrogation by a police officer. It is further submitted that in another application decided by this Court vide order dated 21st March 2013 passed in Anticipatory Bail Application No.175 of 2013, the Narcotic Control

Bureau, the investigating machinery, has acceded to abide by the directions contained in paragraph 28 of the Supreme Court decision in case of Senior Intelligence Officer Vs. Jugal Kishor Samra.

8. In the light of observations made in aforesaid decisions, it is submitted that a case for grant of presence of advocate during interrogation by DRI has been made out and the said prayer ought not to have been rejected by Special Court. It is submitted that although the Special Court has directed the investigating authority to medically examine the applicants prior to recording of their statements and post recording of statements, threats and coercion can be exercised in any form and it may not be in the form of physical assault. It is, therefore, submitted that the relief as sought by the applicants may be granted.

9. Learned counsel for Respondent no.1 vehemently opposed the reliefs sought by the applicants. It is submitted that no ground for granting the prayers which are sought by the applicants, is made out. The contentions raised by the applicants in the reply filed before the Special Court are after thought. The retraction statements which were referred to by learned counsel for applicants, were made belatedly. There is no evidence of any ill-treatment made out to the said accused on record. It is further submitted that the brother and wife of applicant in Criminal Application No.911 of 2017 were medically examined and there was no semblance of any physical assault upon them. It is submitted that the decisions relied upon by learned counsel for applicants were delivered in the facts of said cases. It is also submitted that the observations of Supreme Court and this Court were in respect of the permission to have assistance of

advocate and it was observed by Supreme Court that the Court "May" consider such a request and it is not mandatory that in every case such a request should be accepted. The accused cannot seek such a relief as a matter of course. In the case of Senior Intelligence Officer Vs. Jugal Kishor Samra (supra) relied upon by the applicants, the accused was suffering from serious ailment and it is in those circumstances that the Supreme Court had permitted him to have presence of advocate at some distance during the course of his interrogation. It is submitted that the accused are required to be interrogated in a serious case and presence of their advocates in the vicinity cannot be permitted for smooth interrogation of the case. It is, therefore, submitted that the applications may be rejected.

10. I have perused the documents on record. The applicants were in custody in relation to the case investigated by Narcotic Control Bureau. The applicant in Criminal Application No.912 of 2017 is in custody since last about two years. The applicant in Criminal Application No.911 of 2017 is arrested on 20th January 2016. In the reply filed by the applicants before the NDPS Special Court, it was stated that they are willing to co-operate with the investigation, however, they apprehend that they will be subjected to third degree treatment and confessions would be extorted. It is submitted that in light of the observations of Supreme Court, only prayer which is sought by the applicants is that their advocate should be permitted to remain present at a distance and he will not interfere in the interrogation carried out by the investigating agency/DRI. It is noted that reliance was also placed on the retraction statements of co-accused and it is also submitted that the brother and wife of the applicant in Criminal Application No.911 of 2017 were subjected to

ill-treatment. One of the co-accused who retracted the statement namely Sonaram Chaudhary was interrogated and on the basis of his interrogation, the applicant in Criminal Application No.912 of 2017 was implicated in the present case. In the decision relied upon by learned counsel for applicants, the Supreme Court as well as this Court has considered the need of advocate in the nearby vicinity during the course of interrogation. No doubt, the Court had also considered the factual aspects of those matters wherein such permission was granted. In the present case, the applicants are apprehending third degree treatment and also apprehending that their confessions will be extorted. Although Special Court has directed that the applicants may be medically examined before and after recording of statements, the coercion can be exercised as apprehended by the applicants in any manner. I do not think that any prejudice will be caused to the investigating agency in case advocate of applicants is permitted to remain present at a safe distance but not within the hearing distance, during the course of interrogation, as observed by Supreme Court in case of Senior Intelligence Officer Vs. Jugal Kishor Samra (supra). The advocate, of course, would not interfere in the course of interrogation and will not assist the applicants during the course of their interrogation by DRI officers. Such a permission can be granted in the light of several decisions of Supreme Court which are referred to hereinabove. In the facts of this case, grounds are made out to grant such relief.

11. In view of above, I pass following order :

ORDER

(i) Criminal Application Nos.911 of 2017 and 912 of 2017 are allowed;

(ii) The order dated 22nd August 2017 passed by Special Court under NDPS Act is set aside;

(iii) The interrogation of the applicants may be held within the sight of their Advocate. The advocate authorised by applicants may watch the interrogation proceedings, but they will not be within the hearing range and it will not be open to the applicants to have consultations with their advocate during the course of interrogation;

(iv) The interrogation will be carried out on 28th August 2017 and 29th August 2017 between 10.00 a.m. and 6 p.m.

(v) Both applications are disposed of.

(PRAKASH D. NAIK, J.)

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