

Supreme Court of India

Superintendent, Narcotics ... vs R. Paulsamy on 30 March, 2000

Equivalent citations: AIR 2000 SC 3661, 2001 CriLJ 117, 2000 (71) ECC 695, JT 2000 (9) SC 29, (2000) 9 SCC 549

Bench: K Thomas, D Mohapatra

JUDGMENT

1. Leave granted.

2. Respondent and his wife are now facing a prosecution for offences under Sections 8C, 21, 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and 193 and 120B (120-B) Indian Penal Code. The case against them is that 2 k.g. heroin had been recovered from a room which was in the possession of the respondent. At the relevant time he himself was a Superintendent, Customs, Preventive Unit Madurai. His wife was Superintendent of Central Excise and Customs at Thanjavur. First respondent moved for enlarging him on bail. A learned single Judge of the High Court of Madras passed an order releasing him on bail on executing a bond in a sum of Rs. 10,000/- with two solvent sureties. Appellant (Superintendent of Narcotic Control Bureau, South Zonal Unit, Chennai) has filed this appeal by special leave in challenge of the said order of the Madras High Court.

3. Learned single Judge of the High Court did countenance only two points for adopting the exceptional course of granting bail to an accused involved in the offence under Narcotic Drugs & Psychotropic Substances Act. They are: there was prima facie violation of Section 52 and there was prima facie non-compliance with Section 57 of the Act. Dealing with the former aspect learned single Judge has stated thus:

When we consider Section 82 it is clear from the records available that the ground of arrest was not informed to the petitioner herein. Such fact has not been stated either in the mahazar or in the remand report or in the complaint or in other documents filed in this case.

4. Dealing with the second aspect learned single Judge has observed thus:

No document shows that such a report has been sent to the immediate official superior within forty eight hours, as contemplated under the said Section.

5. This Court has laid down the parameters to be followed while considering the application for bail moved by accused involved in offences under Narcotic Drugs & Psychotropic Substances Act vide *Union of India v. Ram Samujh* (1999) 6 JT (SC) 397. It is unnecessary for us to repeat those parameters over again. We have no doubt that learned single Judge has not followed the aforesaid parameters in this case.

6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the public prosecutor unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while

on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by the learned single Judge at the stage of consideration for bail. The minimum which learned single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned single Judge during bail stage regarding the compliance of the formalities mentioned in those two sections.

7. We may also observe that learned single Judge has not recorded a finding in terms of Section 37 of the Act which is sine qua non for granting bail to an accused involved in the offence under the Act.

8. Shri U.R. Lalit, learned senior counsel arguing for the respondent made an endeavour to argue on points which have not been raised before the High Court. We refrain from considering those points so that any observations which we may make may possibly prejudice either of the sides. But we make it clear that this order will not stand in the way of respondent satisfying the trial Court or the High Court, on any fresh application, of any other valid ground by which he would fall within the parameters contemplated in Section 37 of the Act.

9. As we are not able to concur with the rationale adopted by the learned single Judge we have to interfere with the impugned order. Accordingly, we allow this appeal and set aside the impugned order. We are told that respondent has already been put back in jail and therefore no other consequential direction need be passed by us.

10. Shri U.R. Lalit, learned senior counsel made a last plea that as respondent and his wife both are now interned in jail there is nobody to look after the children and that there is no possibility of effectively conducting defence in the trial. We make it clear that this order will not in any manner affect the right of the wife of the respondent for seeking any remedy which is available to her under law.

11. The Appeal is accordingly disposed of.