



S.B. Criminal Misc. Bail Application No.12221/2010
(Smt. Anita Devi Vs. State of Rajasthan)

Date of Order :-

March 01, 2011

HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr.Anil Upman, for the petitioner.
Ms.Alka Bhatnagar, Public Prosecutor.

Heard the learned counsel for the parties.

Mr. Anil Upman, the learned counsel for the petitioner, has contended that according to the prosecution, on 13th June, 2010, the Sub-Inspector of Police Station Jalupura, Mr. Vinod Kumar, reached Hotel Archana. During the course of routine checking, in Room No.102 of the said hotel, he discovered the petitioner along with one Mr. Manoj Jain. Since both of them were found in suspicious situation, the Police searched the room. During the course of search, 200 gm. of brown sugar was discovered from the possession of the petitioner. Subsequently, a FIR, FIR No.149/2010, was chalked out for offences under Section 8/21 of NDPS Act. According to the learned counsel, since the amount of contraband drugs was less than commercial quantity, therefore, the charge-sheet should have been submitted within a period of sixty days. However, the Police had failed to do so. Therefore, the petitioner had filed a bail application, seeking the benefit of





Section 167(2) Cr.P.C., before the trial court. However, vide order dated 25.09.2010, the bail application was rejected ostensibly on the ground that while 200 gm. of brown sugar was discovered from the possession of the petitioner, 500 gm. of brown sugar was discovered from the possession of Mr. Manoj Jain. Therefore, a total of 700 gm. of brown sugar was recovered from the room. According to the learned trial court, since 700 gm. of brown sugar was recovered, the charge-sheet could be filed within a period of 180 days. Therefore, the benefit of Section 167(2) of Cr.P.C. was denied to the petitioner. The learned counsel has relied upon the case of ***Akhilak @ Vilasan & Anr. Vs. State of Rajasthan [2010 (2) Cr.L.R. (Raj.) 1542]*** in order to contend that the specific quantity of the contraband drugs, recovered from a person, has to be looked into and the total quantity of the contraband drugs, recovered from the room, cannot be considered in order to see the period within which the Investigating Agency has to submit the challan. According to him, only 200 gm. of brown sugar was recovered from the petitioner – a quantity less than commercial quantity. Therefore, the challan had to be submitted within sixty days.

On the other hand, Ms. Alka Bhatnagar, the learned Public Prosecutor, has contended that the total





amount of the contraband goods, seized from the accused-
persons, should be considered. Since in the present case it
is 700 gm., therefore, the Investigating Agency has 180
days for filing the challan. Moreover, since the challan has
already been filed within the period of 180 days, the
petitioner can no longer claim that the benefit of Section
167(2) Cr.P.C. should be granted to her.



In rejoinder, Mr. Upman has contended that in
the case of ***Uday Mohanlal Acharya Vs. State of
Maharashtra [(2001) 5 SCC 453]***, the Hon'ble Supreme
Court had clearly stated that *"if an accused entitled to be
released on bail by application of the proviso to sub-section
(2) of Section 167, makes the application before the
Magistrate, but the Magistrate erroneously refuses the
same and rejects the application and then the accused
moves the higher forum and while the matter remains
pending before the higher forum for consideration, a
charge-sheet is filed, the so-called indefeasible right of the
accused would not stand extinguished thereby and on the
other hand, the accused has to be released on bail"*.

Admittedly, only 200 gm. of brown sugar was
recovered from the petitioner. Thus, less than commercial
quantity was recovered from the petitioner. According to



Section 36 A (4) of NDPS Act, if the contraband drugs, so recovered, is of commercial quantity, then 90 days as mentioned in Section 167 Cr.P.C. should be read as 180 days. Therefore, obviously in case the recovered drug is less than the commercial quantity, then the upper limit of 60 days would be application as laid down by Section 167 (2) Cr.P.C.

Since each accused-person would have to be sentenced with regard to the specific quantity recovered from his possession, obviously the total amount recovered from all the accused-persons cannot be read against him. Admittedly, only 200 gm. of brown sugar was recovered from the petitioner. Thus, the period of limitation for submission of the charge-sheet would have to be read as 60 days, instead of 180 days as read by the learned trial court.

Moreover, keeping in mind the principle established by the Hon'ble Supreme Court in the case of ***Uday Mohanlal Acharya (Supra)***, even if the charge-sheet has been filed subsequent to 60 days, the indefeasible right granted by Section 167(2) Cr.P.C. is not frustrated or extinguished. Therefore, the benefit of the said Section necessarily has to be given to the petitioner.



In this view of the matter, without expressing any opinion about the merits or demerits of the case, but looking to the facts and circumstances of the case, this Court is inclined to grant the benefit of bail to the accused-petitioner under Section 439 Cr.P.C. on a condition.



It is, therefore, ordered that the accused-petitioner namely, Smt. Anita Devi W/o Ashok Kumar, shall be released on bail provided she furnishes a personal bond in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the learned trial Court for her appearance before that Court on all subsequent dates of hearing and as and when called upon to do so.

However, the accused-petitioner is directed to report to the concerned Police Station on every second Monday of the month. In case, the said condition is violated by the accused-petitioner, the State / complainant shall be free to move an application for cancellation of bail being granted by this Court.

Manoj Solanki-

(R.S.CHAUHAN)J.