

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 625 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

GHANSHYAM TULSIRAM DHAKAD

Versus

STATE OF GUJARAT

Appearance:

MR KB PANDE for Petitioners

MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/12/98

C. A V. JUDGEMENT

Applicants are facing the charge under secs.8(c),17,18 and 49 of the Narcotic Drugs and Psychotropic Substance (NDPS) Act and sec.177 of Indian Penal Code and they were arrested in connection with Halol Police Station FIR No.Prohi.265 of 1998 within the stipulated period and sent into judicial custody.

2. The applicants had preferred Cri.Misc.Appln.No.856 of 1998 before the learned Addl. Sessions Judge, Godhra and the same was rejected by the Court below on 27-10-1998. Previously also, one Criminal Revision Application No.367 of 1998 was filed by the present applicants before this Court to enlarge them on bail on default clause and to set aside the judgment and order passed by the learned Addl. Sessions Judge, Godhra in Cri.Misc.Appln.No.412 of 1998. This Court, after hearing the learned counsel for the respective parties, rejected the said Criminal Revision Application on 16-10-1998.

3. This Criminal Revision Application is preferred to release the applicants on default bail mainly on the ground that the Investigating Officer has not submitted the charge-sheet within the stipulated period.

4. Initially, notice was issued. Thereafter, I have heard learned counsel Mr.K.B.Pandey, for the applicants and learned Addl. Public Prosecutor Mr.H.L.Jani, for the opponent-State. I am not repeating the arguments which Mr.Pandey has contended in his application. Learned counsel for the applicants has prayed for bail on default clause relying upon the judgment of the Apex Court, which will be discussed at later stage. He has restricted his arguments on the point that Investigating Officer has not submitted the charge-sheet within the prescribed period and, therefore, applicants are entitled to be released on default bail.

5. Mr.H.L.Jani, learned Addl. Public Prosecutor, has submitted that in this case charge-sheet has been submitted within the stipulated period and, therefore, applicants are not entitled for default bail. He has clarified that Investigating Officer has submitted the charge-sheet through oversight in another Court instead of the concerned Court and contended that it is nothing but only a procedural irregularity which would be curable. He has argued that if this procedural irregularity would be regularised, then no harm or prejudice would be caused to the applicants, therefore, the benefit of the same should not be given to the accused as they are facing the serious charges under the NDPS Act.

6. It appears that that the charge-sheet has been submitted in this case, though inadvertently, in another Court and the applicants want to take advantage of it relying upon a judgment of the Supreme Court reported in

1995(4) Supreme Court Cases page 190 in the case of Union of India Vs. Thamisharasi & Others. The Supreme Court in the above reported case observed that while deciding the case of default bail, limitation imposed by sec.37 of NDPS Act will not come in the way of the Court.

7. There cannot be any dispute regarding the principle laid down by the Apex Court in the above judgment. If charge-sheet has not been submitted within the stipulated period, then they are entitled to bail though sec.37 of the NDPS Act is there and though the applicants are accused under the NDPS Act. But the fact in this case is that the charge-sheet has been submitted within the stipulated period and, therefore, the benefit of the above judgment will not be available to the present applicants merely it has been submitted in another Court. The learned counsel for the applicants, mainly relying upon the reported judgment, argued that Special Court means the Sessions Court and, therefore, at the most it can be said that charge-sheet has been submitted in a different Court.

8. I am of the opinion that it is nothing but a procedural irregularity which would be cured. Looking to the gravity of offence, benefit of the above irregularity will not accrue to the applicants-accused because, as I have stated earlier, the charge-sheet has been submitted within the prescribed time. It was observed in the case of Iqbal Ismail Sodawala Vs. State of Maharashtra and Others, reported in (1975) 3 Supreme Court Cases page 140 that -

"the object of the Code is to ensure for the accused a full and fair trial in accordance with the principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial unless the same results in miscarriage of justice Non-compliance with them would amount to an irregularity which would be curable unless it has resulted in a failure of justice."

Relying upon the above observation of the Supreme Court and also the fact that the charge-sheet has been filed within the stipulated period though through oversight to another Court, I am unable to accept the contention of the learned counsel for the applicants. Hence, I am of the opinion that when the applicants are facing the serious offence punishable under the NDPS Act of having possessed with a huge quantity of contraband article 'opium' of

about 5 kgs. with them, they are not be entitled to be released on default bail.

9. This Criminal Revision Application is, therefore, rejected. Notice is discharged.

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