UNION OF INDIA

v.

NIYAZUDDIN SK & ANR.

(Criminal Appeal No. 1277 of 2017)

JULY 28, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.37 – Respondents-accused were charged for offence involving commercial quantity – Grant of bail – Considerations for – Held: Once the Public Prosecutor opposes the application for bail to a person accused of the offences under s.37 of the Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment – The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence and that person is not likely to commit any offence while on bail – In the instant case, there was no such consideration with regard to the mandatory requirements, while releasing the respondents on bail – Matter needs to be considered afresh by the High Court – The impugned order is set aside and the matter is remitted to the High Court for fresh consideration – Bail.

Disposing of the appeal, the Court

HELD: Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said Section. They are:- In the case of a person accused of an offence punishable under Section 19, under Section 24, under Section 27A and of offences involving commercial quantity. The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. (1) The court must be satisfied that there are

reasonable grounds for believing that the person is not guilty of such offence; (2) that person is not likely to commit any offence while on bail. There is no such consideration with regard to the mandatory requirements, while releasing the respondents on bail. Hence, the matter needs to be considered afresh by the High Court. The impugned order is set aside and the matter is remitted to the High Court for fresh consideration. [Paras 7-9] [515-G-H; 516-A-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1277 of 2017.

From the Judgment and Order dated 22.09.2014 of the High Court of Calcutta in CRM No. 10431 of 2014.

Ranjit Singh, SG, T. C. Sharma, Mrs. Ranjana Narayan, B. Krishna Prasad, Ritin Rai, Advs. for the Appellant.

Ms. Rukhsana Choudhury, Musharraf Hussain, Advs. for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. The appellant is before this Court aggrieved by the order dated 22.09.2014 releasing Respondent Nos.1 and 2 on bail.

3. We are informed that Respondent No.2/Md. Asif Aslam is absconding.

4. The respondents are the accused in a N.D.P.S. case charged under Section 22/23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). The consideration by the High Court in the impugned order reads as follows:

> "Having heard the learned advocate for the petitioners and the learned advocate for the State and considering the materials available in the case diary and also considering the fact that the petitioners are in custody for last 203 days and the investigation is complete and the chargesheet has already been submitted and further considering the fact that the consignment in question was validly imported in India and the same has already been seized, we are of the opinion that further detention of the accused/ petitioners is not necessary.

Therefore, the accused/petitioner no.1, namely, Niyazuddin Sk., and the petitioner no.2, namely Md. Asif Aslam, be released on bail upon furnishing a bond of Rs.15,000/- (Rupees fifteen thousand) only each with two sureties of like amount, one of whom must be local each, to the satisfaction of the learned Chief Judicial Magistrate, Barasat." A B

5. Shri Ranjit Kumar, learned Solicitor General, inviting our reference to Section 37 of the NDPS Act submits that there is no consideration by the High Court on the special conditions referred to in Section 37 of the NDPS Act. Section 37 reads as under:-

"37. Offences to be cognizable and non-bailable. – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)— C

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless– D

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and E

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail." F

6. Learned counsel for the respondents submits that this is not a case covered under Section 37 of the NDPS Act. It is certainly a matter to be addressed by the High Court. G

7. Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said Section. They are :- H

A (1) In the case of a person accused of an offence punishable under Section 19,

(2) Under Section 24,

(3) Under Section 27A and

B (4) Of offences involving commercial quantity.

The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the C court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2) that person is not likely to commit any offence while on bail.

D

8. There is no such consideration with regard to the mandatory requirements, while releasing the respondents on bail.

9. Hence, we are satisfied that the matter needs to be considered afresh by the High Court. The impugned order is set aside and the matter E is remitted to the High Court for fresh consideration. It will be open to the parties to take all available contentions before the High Court.

10. We request the High Court to refer to the contentions of both side and pass order in accordance with law within a period of six months from the date of receipt of a copy of this judgment. Till orders F are passed, as above, and in view of the fact that even the charges have not been framed so far, Respondent No.1/Niyazuddin SK shall be released on interim bail by the High Court, till the matter is disposed of.

11. With the above observations and directions, the appeal stands disposed of.

Devika Gujral Appeal disposed of.