

RAGINI DWIVEDI @ GINI @ RAGS

v.

THE STATE OF KARNATAKA

(Criminal Appeal No. 62 of 2021)

JANUARY 21, 2021

**[ROHINTON FALI NARIMAN,* NAVIN SINHA AND
K. M. JOSEPH, JJ.]**

Code of Criminal Procedure, 1973: s.439 – Bail application rejected by Session Judge applying the provisions of s.37 of the NDPS Act 1985 and stating that as a total seizure ‘from all accused’ was 12 gms cocaine, 55 gm Ganja, 11.5 gms ecstasy tablets and 10 gms MDMA, no bail could be given to the appellant in present case – High Court also rejected bail – On appeal, held: The residence of the appellant was searched pursuant to statement made by one ‘BKR’ – Pursuant to search made of the appellant’s premises, no drugs at all were found – The entirety of the case of the appellant was based upon the statement made by ‘BKR’ and the case diary and at the highest, it could possibly be said that the appellant consumed certain drugs at parties – Appellant was arrested also on a conspiracy charge, which the High Court itself found to be tenuous, saying that the said charge has to be proved at the trial – Chargesheet was not yet filed – s.37 was wrongly invoked and resultantly bail must ensue – Bail granted – Narcotic Drugs and Psychotropic Substances Act, 1985 – s.37.

Disposing of the appeals and writ petition, the Court Held:

Though the appellant was charged with offences under Section 21, 21(c), 27A, 27(b) and 29 of the NDPS Act, *prima facie*, if at all any offence has been made out, it could only be under Section 27, being the offence of consuming drugs at parties, for which the maximum sentence for consumption of certain drugs under Section 27(a) is one year, and under Section 27(b) is six months. This being the case, Section 37 was wrongly invoked by both the Additional Sessions Judge and by the High Court. [Paras 8, 9]

* Author

RAGINI DWIVEDI @ GINI @ RAGS v. THE STATE OF KARNATAKA

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 62 of 2021.

From the Judgment and Order dated 03.11.2020 OF the High Court of Karnataka at Bengaluru in CRLP No. 5389 of 2020.

Siddharth Luthra, Sr. Adv., Sahil Bhalaiik, Tushar Giri, Ms. Sakshi Sharma, Md. Tahir, Md. Akhil, Ayush Kaushik, Ms. Ankita Tiwari, Lakshy Mehta, Mayank Jain, Parmatma Singh, Madhur Jain, Advs. for the Appellant.

Tushar Mehta, SG, Shubhranshu Padhi, Ashish Yadav, Rakshit Jain, Vishal Banshal, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

SLP (CRL.) NO. 5998 OF 2020

1. Leave granted.
2. We have heard Mr. Siddharth Luthra, learned senior counsel appearing for the appellant(s) as well as Mr. Tushar Mehta, learned Solicitor General at some length. It transpires that the appellant is an actress whose residence was searched pursuant to a statement made by one B.K.Ravishankar on 03.09.2020. The search of the premises of the appellant yielded the following items:-
 1. *One black colour Samsung Note 10 mobile phone.*
 2. *Blue colour Samsung Galaxy Note 9 mobile phone*
 3. *Gold colour Apple mobile phone.*
 4. *Sandisk pendrive – 32 GB*
 5. *Sandisk pendrive – 8 GB*
 6. *A wooden box written on that ‘Organic smoke menthol free tobacco’. Inside that, 6 cigarettes and 3 cigarette strips.”*
3. Thereafter, a complaint was filed by Sh. K.C. Goutham, Assistant Commissioner of Police, ANW, CCB, Bengaluru, on 04.09.2020, in which the following statement was made :-

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"In connection with the above subject, I, K.C. Goutham, serving as Assistant Commissioner of Police, CCB, Narcotics Control Bureau, Bangalore City would like to request you that, as per the verified information from my known sources, a well-organized network was involved in illegal activities, made financial transactions and gained illegal money by getting drugs from different States that is from Goa, Mumbai, Punjab, Andhra Pradesh, Kerala and even from foreign countries and supplied the same in Five Star Hotels of Bangalore, Pubs, organised Dance party, Music programs, in certain Farm Houses to the Industrialists, Celebrities, a few Actors and Actresses, DJs, Software Employees and others who attend to parties at above places. I have taken up investigation in this regard. During the investigation, information about the said acts has been collected from B.K. Ravishankar. In the said information, the following persons with a secret design have organised parties in different parts of the Bangalore City, consumers were called in and drugs were supplied to them through drug peddlers and the consumers have consumed drugs.

1) Shivaprakash, 2) Ragini Dwivedi, 3) Veeren Khanna, 4) Prashanth Ranka, 5) Vaibhav Jain, 6) Adithya Alva, 7) Lume Pepper @Simon of Decor City of Senegal Country, 8) Prashanth Raju, 9) Ashwin @ Boogi, 10) Abhiswamy, 11) Rahul Tonse, 12) Vinay and others.

The said persons were organising dance and music parties in different parts of the Bangalore City, and supplying and consuming drugs like Ganja, Ecstasy Pills, Cocaine, MDMA, LSD etc. along with drinks. There is information about the supplying of drugs earlier also.

On 16.06.2019 Ravishankar has sent a message through his mobile to the peddler Loom Pepper @ Simon's mobile No. 6385248582 texting as "Get a very very good stuff" and in another message texting as "2G Celebrity Stuff".

On 12.04.2020 Ravishankar sent message to peddler Loom Pepper @ Simon's mobile No. 9902031540 texting as "Gave me Less than 1 Gram", for this the peddler on 13.04.2020 at 06.50 hours (GMT) has texted to the Ravishankar mobile No. 9880404604 as "No O is because it is in a Rock Form That is why is complete 1G".

Later on 23.06.2020 the following Whatsapp Chat are exchanged between Ravishankar and his friend Prashanth Ranka 1) Dont call to peddlers, 2) Nope not having it from long time, 3) Big time tracking is

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going on, 4) wht hpnd, 5) ohkkk, 6) Sandeep Patil sir, 7) How come bro, 8) ohkkk, 9) came to know yesterday from sources, 10) thank u very much, 11) Take care. Like these, there are many more Whatsapp messages and code words have been used in these messages.

Therefore, it is requested to take suitable legal action under N.D.P.S. Act against 1) Shivaprakash, 2) Ragini Dwivedi, 3) Veeren Khanna, 4) Prashanth Ranka, 5) Vaibhav Jain, 6) Adithya Alva, 7) Lume Pepper @Simon of Decor City of Senegal Country, 8) Prashanth Raju, 9) Ashwin @ Boogi, 10) Abhiswamy, 11) Rahul Tonse, 12) Vinay and others. I am enclosing along with this a copy of the Statement given by B.K.Ravishankar and copy of the Whatsapp messages.”

4. Pursuant to this complaint, the appellant has been arrested and has been in jail from 04.09.2020.
5. On an application made by the appellant for bail, the Additional City Civil and Sessions Judge, by an order dated 28.09.2020, rejected the aforesaid application, applying the provisions of Section 37 of the NDPS Act and stating that as a total seizure '*from all accused*' was 12 gms Cocaine, 55 gms Ganja, 8 ecstasy tablets, 11.5 gms ecstasy tablets and 10 gms MDMA, no bail could be given to the appellant in the present case.
6. The High Court, by the impugned Judgment dated 03.11.2020, relying upon the statement made by B.K.Ravishankar made under Section 67 of the NDPS Act, the case diary and the parameters laid down in Section 37 of the NDPS Act, also rejected bail.
7. Having been taken through the entire proceedings by Sh. Siddharth Luthra, a few things become apparent:-
 - i) that pursuant to the search made of the appellant's premises, no drugs at all were found;
 - ii) that the entirety of the case of the appellant is based upon the statement made by B.K.Ravishankar and the case diary and at the highest, it could possibly be said that the appellant consumed certain drugs at parties; and
 - iii) What is important to note is that the appellant has been arrested also on a conspiracy charge, which the High Court itself found to be tenuous, saying the said charge needs to be proved at the trial. It is also noted that till date, no chargesheet has been filed.

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8. Though the appellant has been charged with offences under Section 21, 21(c), 27A, 27(b) and 29 of the NDPS Act, *prima facie*, if at all any offence has been made out, it could only be under Section 27, being the offence of consuming drugs at parties, for which the maximum sentence for consumption of certain drugs under Section 27(a) is one year, and under Section 27(b) is six months.
9. This being the case, it is clear that Section 37 was wrongly invoked by both the Ld. Additional Sessions Judge and by the High Court. With Section 37 out of the way, this is a case in which bail must ensue, as a result of which, we set aside the Judgment of the High Court and enlarge the appellant (Ragini Dwivedi @Gini @Rags) on bail, subject to conditions to be imposed by the trial court.
10. Any observations made in this Judgment will not be used to hamper investigation and obviously, will not be used at the trial.
11. In view of the above, the appeal is allowed.

SLP (CRL.) NO. 6185 OF 2020

12. Leave granted.
13. The Judgment rendered above in SLP (Crl.) 5998 of 2020 shall also apply in this case as well. The appellant (Shivaprakash) is granted anticipatory bail. In the event of his arrest in connection with Crime No. 588/2018, registered at Police Station Banasawadi, Bengaluru, he shall be released on bail to the satisfaction of the arresting officer. The impugned Judgment of the High Court is set aside and the appeal is allowed.

W.P. (Crl.) 384 of 2020

14. In view of the Judgment passed in the above cases, this writ petition has become infructuous and is dismissed as such.

Headnotes prepared by: Devika Gujral

*Result of the case:
Matters and appeals disposed of*