

INTELLIGENCE OFFICER NARCOTICS
CONTROL BUREAU

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v.

SAMBHU SONKAR AND ANR.

FEBRUARY 2, 2001

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[M.B. SHAH AND S.N. VARIAVA, JJ.]

Narcotic Drugs & Psychotropic Substances Act, 1985: Sections 20(b)(i) and 37.

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Bail—Grant of—Conditions to be fulfilled—Ganja recovered from accused—High Court granted bail on the ground that the restriction imposed by Section 37 was not applicable as the maximum imprisonment provided for the offence under Section 20(b)(i) was 5 years—Correctness of—Held: In appropriate cases court may impose a maximum punishment of 5 years under Section 20(b)(i)—Therefore, there is no reason to exclude the said clause from the operation of Section 37—Hence, High Court erred in granting bail—Code of Criminal Procedure, 1973, Section 439.

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The appellant recovered ganja from the respondent and the Additional District Judge dismissed the respondent's bail application. But the High Court allowed the bail application by holding that the restrictions imposed by Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 would not be applicable as the maximum imprisonment provided for the offence under Section 20(b)(i) was 5 years. Hence this appeal.

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Allowing the appeal, the Court

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HELD : 1. The scheme of Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 reveals that the exercise of the power to grant bail by the Special Judge is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, 1973, but is also subject to the limitation placed by Section 37 of the Act which commences with a non-obstante clause. The operative part of the said Section is in the negative in prescribing the enlargement of bail of any person accused of commission of an offence under the Act unless two conditions are satisfied. The first condition is that prosecution must be given an opportunity to oppose the application and the second is that the Court must be satisfied that there

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- A are reasonable grounds for believing that the accused is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates. As per the mandate of Section 37, no person accused of an offence punishable for a term of imprisonment of 5 years or more under the Act can be released on bail unless the aforesaid conditions are satisfied. Pre-condition for application of Section 37(1)(b) would be that the offence is
- B punishable for a term of imprisonment of 5 years or more. Plain reading of the above said clause makes it clear that in case where the person is accused of an offence punishable for a term of imprisonment of 5 years then he cannot be released unless the conditions mentioned therein are satisfied. In case of offence punishable under Section 20(b)(i), maximum punishment is
- C for a term of imprisonment of 5 years and a fine, which may extend to Rs. 50,000. There is no justifiable reason to hold that the maximum term of imprisonment is to be excluded for the purpose of interpretation and Section 37 would not cover in its fold offence punishable under Section 20(b)(i).

[824-G-H; 825-A-D]

- D 2. Further, even if the legislative intent in the context of other provisions, which provide for punishment is considered, it would be clear that Section 37 would cover in its fold the offence punishable under Section 20(b)(i). Provisions empowering the Court to impose punishment can be divided into four parts, namely, (i) less than five years, (ii) up to five years (iii) more than five years and (iv) providing death penalty. Sections 26, 27 and 32 provide for
- E imprisonment for a term, which may be less than five years. Section 25(a) provides that the imprisonment may extend up to ten years. Other Sections namely, Section 15, 16, 17, 18, 19, 20(b)(ii), 21, 22, 23, 24 and 25 provide that the punishment shall not be 'for a term less than ten years'. Except Section 20(b)(i), there is no provisions which prescribes that imprisonment
- F may extend to five years. For the offence punishable under the said Section, in appropriate cases, Court may impose maximum punishment of five years. Therefore, there is no reason to exclude the said clause form the operation of Section 37. [825-D-F]

Maktool Singh v. State of Punjab, [1999] 3 SCC 321, relied on.

- G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 137 of 2001.

From the Judgment and Order dated 7.3.2000 of the Calcutta High Court in Crl. M. No. 456 of 2000.

- H Mukul Rohtagi, Tapash Ray, Ms. Sushma Suri, Ms. Binu Tamta, Ms.

Deepti Chowdhury, Dilip Kr. Das, Anup Chakraborty, Ajay Singh, Sarla Chandra A
and Tara Chandra Sharma for the appearing parties.

The Judgment of the Court was delivered by

SHAH, J. Leave granted.

Limited question involved in this appeal is whether the restrictions B
imposed under Section 37 of the Narcotic Drugs & Psychotropic Substances
Act, 1985 (hereinafter referred to as "the Act") would be applicable in a case
where offence is punishable under Section 20 (b) (i) for possessing Ganja?
It is the prosecution version that acting on intelligence report a batch of
Narcotic Control Bureau officers searched the premises of respondent No.1, C
Shambhu Sonkar, at G.T. Road, P.S. Golabari, District Howrah on 22.11.1999
and recovered 18.7 Kgs. of Ganja and a sum of Rs. 4,370. On the same date
a confessional statement of the respondent was also recorded. The respondent
filed a bail application before the Additional District Judge, Howrah, which
was rejected by order dated 2nd February, 2000. Thereafter, the respondent D
approached the High Court of Calcutta and the High Court by its order dated
7th March, 2000 allowed the said bail application by holding that restrictions
imposed by Section 37 of the N.D.P.S. Act, 1985 (hereinafter referred to as
'NDPS Act') would not be applicable as the maximum imprisonment provided
for the offence under Section 20(b)(i) is 5 years. That order is challenged by
filing the present petition under Article 136 of the Constitution. E

Learned Additional Solicitor General submitted that order passed by the
High Court is on the face of it against the statutory mandate provided under
Section 37. As against this, learned counsel appearing for the respondents F
submitted that the interpretation given by the High Court is justified, particularly
because it affects personal liberty of a citizen who is yet to be tried. For
appreciating the rival contentions we would refer to Sections 20 and 37 of the
said Act which read thus:

*"20. Punishment for contravention in relation to cannabis plant and
cannabis.—Whoever, in contravention of any provision of this Act
or any rule or order made or condition of licence granted thereunder,— G*

- (a) cultivates any cannabis plant; or
- (b) produces, manufactures, possesses, sells, purchases, transports,
imports inter-State, exports inter-State or uses cannabis,

shall be punishable,—

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- A (i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;
- B (ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees;

C Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

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

- D (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless-
- E (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (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.

F (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.”

G The scheme of section 37 reveals that the exercise of the power to grant bail by the Special Judge is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in negative in prescribing the enlargement of bail of any person accused of commission of an offence under the Act unless two

H conditions are satisfied. The first condition is that prosecution must be given

an opportunity to oppose the application and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates. As per the mandate of Section 37, no person accused of an offence punishable for a term of imprisonment of 5 years or more under the Act can be released on bail unless the conditions mentioned in sub-clauses (i) and (ii) of Clause (b) are satisfied. Pre-condition for application of clause (b) would be that offence is punishable for a term of imprisonment of 5 years or more. Plain reading of the above said clause makes it clear that in case where the person is accused of an offence punishable for a terms of imprisonment of 5 years then he cannot be released unless the conditions mentioned therein are satisfied. In case of offence punishable under Section 20 (b) (i), maximum punishment is for a term of imprisonment of 5 years and a fine which may extend to Rs. 50,000. There is no justifiable reason to hold that maximum term of imprisonment is to be excluded for the purpose of interpretation and Section 37 would not cover in its fold offence punishable under Section 20(b)(i).

Further, even if we consider the legislative intent in context of other provisions which provide for punishment it would be clear that Section 37 would cover in its fold the offence punishable under Section 20(b)(i). Provisions empowering the Court to impose punishment can be divided into four parts, namely, (i) less than five years, (ii) up to five years (iii) more than five years and (iv) providing death penalty. Sections 26, 27 and 32 provide for imprisonment for a term which may be less than five years. Section 25(a) provides that the imprisonment may extend up to ten years. Other sections, namely, Section 15, 16, 17, 18, 19, 20(b)(ii), 21, 22, 23, 24 and 25 provide that punishment shall not be 'for a term less than ten years'. Except Section 20(b)(i), there is no provision which prescribes that imprisonment may extend to five years. For the offence punishable under said Section, in appropriate cases, Court may impose maximum punishment of five years. Therefore, there is no reason to exclude the said clause from the operation of Section 37.

The aforesaid interpretation is also in consonance with the legislative object. The Act has provided stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances and matters connected therewith. For granting of bail, in the Statement of Objects and Reasons for introducing Bill 125 of 1988 (Act 2 of 1989), the following passage has been stated:

"Even though the major offences are non-bailable by virtue of the

A level of punishment, on technical grounds. drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the NDPS Act, 1985 the need to amend the law to further strengthen it, has been felt.”

B Further, in *Maktool Singh v. State of Punjab*, [1999] 3 SCC 321 this Court while interpreting Section 32A which provides that no sentence awarded under the Act other than Section 27 shall be suspended or remitted or commuted, considered Section 37 along with the scheme of the Act and held thus:

C “The only offences exempted from the purview of the aforesaid rigours on the bail provisions are those under Sections 26 and 27 of the Act. The former is punishable up to a maximum imprisonment for three years and the latter up to a maximum imprisonment for one year. *For all other offences*, the court’s power to release an accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.”

E In view of the foregoing discussion, it would be difficult to accept the contention of the learned counsel for the respondent that the liberal interpretation given by the High Court to Section 37 is justified as it affects personal liberty of a citizen who is yet to be tried. In our view, considering the legislative intent of curbing the practice of giving bail on technical ground in a crime which adversely affects the entire society including lives of number of persons and the object of making stringent provisions for control of illicit traffic in narcotic drugs and psychotropic substances, there is no reason to accept the construction of the section which its language can hardly bear.

G In the result, the appeal is allowed, the impugned order passed by the High Court releasing the respondent on bail is set aside. Bail bonds of the accused stand cancelled and he is directed to be taken into custody. The trial court is directed to expedite the trial.