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SLP(Crl.)No. 2603 OF 2003
ITEM No.2

Court No.2

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 2603/2003

(From the judgement and order dated 12/08/2002 in CRMC 7053/02
of The HIGH COURT OF KERALA AT ERNAKULAM)

N.C.B. TRIVANDRARUM

Petitioner (s)

VERSUS

JALALUDDIN A.

Respondent (s)

(With Appln(s). for c/delay in filing SLP and c/delay in refiling SLP and
stay)

Date : 22/04/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Petitioner (s)Ms. Binu Tamta,Adv.
Ms. Sushma Suri,Adv.

For Respondent (s)
Mr. Romy Chacko,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Ganga Thakur) (Prem Prakash)
PS to Registrar Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2004
(Arising out of SLP(Crl) No. 2603/03)

N.C.B. Trivandrarum
...Appellant

Versus

Jalaluddin A.
...Respondents

O R D E R

Heard learned counsel for the parties.
Leave granted.

The respondent herein was prosecuted on 8th May, 2002 for being in possession of 790 grams of heroin is a commercial quantity under the amended provisions of the NDPS Act. His application for grant of bail made to the Sessions Court was rejected. He preferred bail application before the High Court of Kerala at Ernakulam which came up before the court for admission on 12th August, 2002. On the very same day the High Court passed the impugned order by observing as follows:

"petitioner was arrested on 8.5.2002 and he is in judicial custody. The Special Public Prosecutor for NCR Cases submits that he opposes this application. I find that the petitioner is entitled to get bail at this stage."

It is submitted before us that the impugned order of the High Court is unsustainable in law because the mandatory requirements of Section 37 of the NDPS Act have not been followed by the court. Section 37 imposes certain restrictions while granting bail in the matters arising under this Act. One of the conditions herein is that before granting such bail Public Prosecutor has to be given an opportunity to oppose the application for such release. In the instant case we notice that the matter came up for admission on 12th August, 2002 and there is nothing on record to show that the Public Prosecutor was given the time to file objections. What is recorded is that he opposed the grant of bail. Be that as it may another mandatory requirement of Section 37 of the Act is that where Public Prosecutor opposes the bail application, the court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. In the impugned order we do not find any such satisfaction recorded by the High Court while granting bail nor there is any material available to show that the High Court applied its mind to these mandatory requirements of the Act.

For the said reasons, we are of the opinion that the impugned order of the High Court granting bail to the respondent cannot be sustained. Hence we allow this appeal, set aside the order of the High Court and remand the matter back to the High Court to consider the bail application of the respondent bearing in mind the restrictions found in Section 37 of the Act.

The appeal is allowed.

(N. SANTOSH HEGDE)J.

.....J.
(B.P. SINGH)

New Delhi,
April 22, 2004.