

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.984-87 OF 2008  
(@SPECIAL LEAVE PETITION (CRL.)NOS.3955-3958 OF 2008)

OMPRAKASH DAULATRAM NOGAJA

APPELLANT(S)

VERSUS

INTELLIGENCE OFFICER, NAR. CON. BURE. & ANR.

RESPONDENT(S)

ORDER

Leave granted.

Heard learned counsel for the parties at length.

In the instant case, the appellant is aggrieved by the action of not releasing him on bail in spite of the order passed by the competent court to release him on bail under the Narcotic Drugs and Psychotropic Substances Act, 1985.

The Special Court, after considering the matter on merits, ordered to enlarge the appellant on bail. The respondents herein (Intelligence Officer, Narcotics Control Bureau & Anr.) approached the High Court for cancellation of bail under sub-section (2) of Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

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The High Court, during the pendency of the proceedings, kept the order in abeyance by not allowing release of the appellant on bail. The matter appeared on board from time to time but was adjourned. The resultant effect is that the appellant, though the order is in his favour, is in jail.

Learned senior counsel for the appellant contended that in view of the order passed by a competent court, he ought to have been released on bail forthwith. According to him, as the order can be interfered with only in exercise of power under sub-section (2) of Section 439 of the Code unless the appellant is released on bail and the order is set aside by the High Court, it is not open to the court to keep the order of release in abeyance. Alternatively, it was argued that after the order of release of the accused is passed by a Court, the relevant circumstances would be as to whether in case of cancellation of bail, the accused would be available or not. The counsel stated that neither in the application for cancellation of bail under sub-section (2) of Section 439 of the Code such a statement was made nor even in reply filed in this Court such apprehension has been shown. It was, therefore, submitted that even if this court is of the view that since the matter is sub-judice before the High Court, let the High Court decide it. But the appellant may be ordered to be enlarged on bail on terms and conditions as imposed on him by the Special Court. If this Court thinks fit, additional conditions may also be imposed on him but he may not be kept in jail.

Learned Additional Solicitor General for the Department, on the other hand, submitted that in an appropriate case, the power can be exercised of keeping the order in abeyance. If such power is not read under sub-section (2) of Section 439 of the Code, then, to that extent, it can be said that the field is not occupied by statutory provision. If it is so, submitted learned Additional Solicitor General, that inherent powers under Section 482 of the Code can be invoked by the Court and appropriate order can be passed.

In view of the facts and circumstances and particularly when nothing has been shown on record as to non-availability of the appellant accused in case bail is cancelled, in our opinion, it would be appropriate without expressing any final opinion on the question of law, that the appellant herein is ordered to be enlarged on bail subject to all the conditions which have been imposed by the Special Court, NDPS, Greater Mumbai on April 24, 2008. We may also state that it would be appropriate if we direct the appellant herein to appear before the Intelligent Officer, NCB, Mumbai at 11 o'clock on every alternate day till the matter is disposed of by the High Court. The High Court may decide the matter as expeditiously as possible.

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We may hasten to add that we may not be understood to have expressed any opinion on the merits of the matter. As and when the matter will come up for hearing, it will be decided in accordance with law after hearing both sides. Our attention has been drawn by learned Additional Solicitor General to several decisions of this Court. It is open to both the sides to take all contentions available in law.

The appeals are accordingly allowed.

.J.

.....  
(C.K.THAKKER)

.J.

.....  
(LOKESHWAR SINGH PANTA)

NEW DELHI;  
30TH MAY, 2008.

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).3955-3958/2008  
(From the judgement and order dated 25/04/2008 in CRLA No. 1368/2008 of The HIGH  
COURT OF JUDICATURE AT BOMBAY)

OMPRAKASH DAULATRAM NOGAJA

Petitioner(s)

VERSUS

INTELLIGENCE OFFICER, NAR.CON.BURE.& ANR.

Respondent(s)

(With appln(s) for ex-Parte stay, exemption from filing c/c of the impugned Judgment, permission  
to file additional documents)

Date: 30/05/2008 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.K. THAKKER  
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA  
(VACATION BENCH)

For Petitioner(s) Mr.Uday U.Lalit, Sr.Adv.  
M/s.Sanjay Sen, Rana S.Biswas, Shyam Dewani,  
Manish, P.S.Chouhan, Mridul Chakraborty,  
Ishwari Pd.Bagaria, Sharmila Upadhyay,  
Advs. with him

For Respondent(s) Mr.P.Tripathi, ASG  
Mr.Vikas Sharma, Adv.  
Mr. B.V. Balaram Das, Adv.

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UPON hearing counsel the Court made the following  
ORDER

Leave granted.

Heard learned counsel for the parties at length.

The appeals are allowed and the appellant is directed to be enlarged on condition  
al  
bail, in terms of the signed order.

(G.V.Ramana)  
Court Master

(Vinod Kulvi)  
Court Master

(signed order is placed on the file)