

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).995/2006

(From the judgement and order dated 04/03/2005 in Crl.MP No.1220/2005 in CRLA No. 812/2004 of The HIGH COURT OF MADRAS, BENCH AT MADURAI)

SR.INTELLIGENCE OFFICER,INTEL. CELL

Petitioner(s)

VERSUS

K. MOHAMED FAROOK

Respondent(s)

(With appln(s) for stay)

Date: 15/02/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Petitioner(s)

Mr.K.Radhakrishnan, Sr. Adv.

Mr. A.Subba Rao, Adv. for

Mr. R.S. Suri,Adv.

For Respondent(s)

Mr. V.J. Francis,Adv.

Mr. A. Radhakrishnan, Adv.

Mr.Jenis, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The Appeal is allowed.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 216 OF 2007

(Arising out of SLP(Crl.) No.995 of 2006)

Senior Intelligence Officer,
Intelligence Cell

..Appellant

Versus

K. Mohamed Farook

..Respondent

O R D E R

Leave granted.

This appeal has been filed against the order of the Single Judge

of the Madras High Court at Madurai Bench by which the Single Judge

suspended the sentence during the pendency of the appeal of the

accused-respondent, hereinafter referred to as 'the respondent', in a

case under the Narcotic Drugs and Psychotropic Substances Act, 1985

(for short 'the Act').

Respondent along with others has been found guilty of having in his possession 27 kg. of heroin. Recovery allegedly made from him was of 'commercial quantity'.

The trial Court had convicted the respondent for offences under Sections 8(c) r/w 29, 8(c)r/w 21, 8(c) r/w 23, r/w 28 of the Act and sentenced him to undergo rigorous imprisonment for ten years' and to pay a fine of rupees one lakh and in default rigorous imprisonment for three years.

Respondent, being aggrieved, filed an appeal along with an application for suspension of sentence, which was admitted. The single Judge suspended the sentence by observing thus:

"Considering the facts and circumstances of the case, the substantive sentence of imprisonment along is suspended, and the petitioner is directed to be released on bail on his executing a bond for Rs.5,000/- (Rupees Five Thousand) with two sureties each for a like sum to the satisfaction of the Special District and Sessions Judge for E.C. Act and N.D.P.S. Act Cases at Madurai and the petitioner shall appear before the concerned magistrate on the first working day of every month at 10.30 a.m., pending disposal of the above appeal."

Appellant has filed the present appeal alleging that the bail granted by the High Court is in violation of Section 37 of the Act.

Section 37 of the Act provides:

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

(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--

(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."

A reading of section 37(b)(ii) of the Act shows that the court can grant bail only after being satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. No such finding/satisfaction has been recorded in the impugned order. The

impugned order is liable to be set aside.

Accordingly, this appeal is accepted; the impugned order suspending the sentence and granting bail to the respondent is set aside and it is directed that respondent be taken into custody forthwith.

.....J.

[ASHOK BHAN]

NEW DELHI;

FEBRUARY 15, 2007.

.....J.

[V.S.SIRPURKAR]