2025 INSC 292

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 77 OF 2025

UNION OF INDIA THR. I.O.
NARCOTICS CONTROL
BUREAU **…APPELLANT(S)**

VERSUS

MAN SINGH VERMA **…RESPONDENT(S)**

J U D G M E N T

SANJAY KAROL J.

1. The present appeal arises from the impugned order dated 22nd May, 2024 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Crl. Misc. Bail Application No.2812 of 2023, wherein the High Court directed the Director

of Narcotics Control Bureau[1], New Delhi, to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs) as compensation to the respondent for the alleged wrongful confinement. Aggrieved by the said direction, the Union of India through NCB has preferred the present appeal.

2. The brief facts leading to the present appeal are as under :-

2.1. In a joint operation, the NCB seized 1280 grams of brown powder (*allegedly heroin*) from the possession of Man Singh Verma (respondent herein) and one Aman Singh. Accordingly, Criminal Case No.02/2023 was registered against the respondent under Sections 8(C), 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985[2] on 6th January, 2023, consequently, he was remanded to judicial custody.

2.2. NCB prepared an arrest memo on the same date and drew four samples – SO1, SD1, SO2 and SD2 from the recovered substance. Two of these samples (SO1 and SD1) were sent to the Central Revenues Control

1 For short 'NCB'
2 Abbreviated as 'NDPS'

Laboratory (CRPL), New Delhi, for chemical examination.

2.3. While awaiting results from the laboratory, the respondent filed B.A.No.251/2023 before Special Judge, NDPS, Barabanki District, seeking bail. This application was rejected *vide* order dated 24th January, 2023. Consequently, the respondent approached the High Court by filing Crl. Misc. Bail Application No.2812 of 2023.

2.4. On 30th January, 2023, CRPL issued its report stating that the sample tested negative for heroin and other narcotic substances. Following this, the Investigating Officer (I.O.) moved an application before the Special Court seeking permission to send a second set of samples (SO2 and SD2) to the Central Forensic Science Laboratory (CFSL), Chandigarh, for further examination. The same was allowed by the concerned Court.

2.5. On 5th April, 2023, the report received from CFSL, Chandigarh, found that the second set of samples also tested negative for any narcotic substance. As a result, on

6th April, 2023, NCB filed a closure report before the Special Judge, NDPS, pursuant to which, the respondent was released from District Jail, Barabanki on 10th April, 2023 under an order of the Additional District and Sessions Judge.

2.6. Despite filing of the closure report and the respondent's release, the High Court proceeded to adjudicate the pending bail application and *vide* the impugned order observed that the respondent was a young person who had been wrongfully confined for four months despite the initial laboratory finding and, therefore, directed the Director, NCB to pay Rs.5,00,000/- as compensation to the respondent within a period of two months and to file a compliance affidavit.

2.7. Aggrieved by this order, the appellant filed a Modification Application before the High Court seeking waiver of the compensation, which was rejected *vide* order dated 16th July, 2024 on the ground that the

application is barred under Section 362 of Code of Criminal Procedure, 1973[3].

2.8. An Application for Grant of Exemption (for paying compensation) was also preferred by one Mr. Surendra Kumar, Junior Intelligence Officer, NCB, which was rejected by the High Court *vide* order dated 9th September, 2024, observing that the order granting compensation has not been challenged before a higher Court.

3. We have heard Mr. Satya Darshi Sanjay, learned Additional Solicitor General for the appellant, and Mr. Pijush K. Roy, learned Senior Counsel appointed as Amicus Curiae in the matter. The respondent, despite service, has not entered an appearance. We have also perused the material placed on record and the written submission filed by the Amicus Curiae. The main contentions raised, as can be understood from the record, have been recorded as under:

APPELLANTS:

(i) The High Court, while exercising its power under Section 439 CrPC, went beyond its jurisdiction by doing a detailed

3 For short 'CrPC'

examination of evidence and awarding compensation for alleged wrongful detention. Reliance was placed on ***Kalyan Chandra Sarkar v. Rajesh Ranjan***[4], wherein it was observed that at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of a case need not be undertaken.

(ii) The officers of NCB acted in *bonafide* manner on credible intelligence and initial test results. Section 69 of the NDPS Act offers protection to officers for acts done in good faith, thus prohibiting prosecution as well as imposition of fine without proof of *malafides*.

(iii) It was further submitted that the respondent had been released from custody on 10th April, 2023, almost a year before the High Court passed the impugned order, rendering the bail application infructuous. Consequently, the award of compensation was unwarranted.

AMICUS CURIAE:

(i) It was submitted that re-testing the second sample of the same alleged contraband, which had already been tested

4 (2004) 7 SCC 528

negative in its previous sample sent for analysis, was impermissible under the NDPS Act and the guidelines laid down in ***Thana Singh v. Central Bureau of Narcotics***[5]. In the present case, the concerned authority should have filed an application for closure before the Special Judge upon receiving the first negative report from CRPL on 30th January, 2023. However, instead of filing such an application, the authority proceeded with re-testing of second sample, which was illegal and led to an unjustified extension of the respondent's custody.

(ii) It was urged that the principle of awarding compensatory relief for the violation of fundamental rights by public officials as recognized in ***Rudal Sah v. State of Bihar***[6]; ***Nilabati Behera v. State of Orissa***[7]; and ***D.K. Basu v. State of West Bengal***[8] – all adjudicated under Article 32 of the Constitution of India, should be extended to bail proceedings under Section 439 CrPC.

(iii) Protection under Section 69 NDPS Act to the authorities is not absolute. The re-testing of second sample was done due to malice, as no exceptional circumstances as per ***Thana Singh***

5 (2013) 2 SCC 590
6 (1983) 4 SCC 141
7 (1993) 2 SCC 746
8 (1997) 1 SCC 416

(supra) were present to justify the second examination by a laboratory.

4. The sole issue, which arises for consideration of this Court, is whether the contours of Section 439 CrPC permit the grant of compensation by the High Court to the appellant.

5. To answer this issue at hand, it is imperative for this Court to discuss the scope of jurisdiction of the Court while exercising its power under Section 439 CrPC. Section 439 of CrPC reads as:

> "**439. Special powers of High Court or Court of Session regarding bail**.—(1) A High Court or Court of Session may direct,—
>
> (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;
>
> (b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:
>
> Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with 184 imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.
>
> Provided further that the High Court or the Court of Session shall, before granting bail to a person who is

> accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.
>
> (1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section DB of the Indian Penal Code (45 of 1860).]
>
> (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

6. It is a settled principle of law that the jurisdiction conferred upon a Court under Section 439 CrPC is limited to grant or refusal of bail pending trial. In the following decisions, this Court has time and again held that the sphere of consideration, when exercising power under this Section pertains only to securing or restricting liberty of the person in question.

6.1. In ***RBI v. Cooperative Bank Deposit A/C HR. Sha***[9], this Court held that the High Court order, directing the Cooperative Bank to distribute the money recovered

9 (2010) 15 SCC 85

from the accused, to persons who had made deposits less than Rs.10,000/- as and when such recoveries are made, passed in a Bail Application had far-reaching consequences and was beyond the scope of Section 439 CrPC. The Court held as under :

> "6. We are of the opinion that the far-reaching consequences of the directions of the High Court are in a way beyond the scope of an application for bail filed by an accused under Section 439 of the Code of Criminal Procedure and the High Court, as much as anyone else, must stay confined to the issues relevant to the matter before it. It was thus not open to the High Court to pass orders which could affect the working of banks all over the country. It has been pointed out by Mr Basava Prabhu S. Patil, the learned Senior Counsel for the appellant that it is for this reason that Reserve Bank of India had filed this appeal."

6.2. This Court in ***Sangitaben Shaileshbhai Datanta v. State of Gujarat***[10], while examining a case wherein the High Court had ordered the accused as well as the relatives of the victim to undergo scientific tests, viz., lie detector, brain mapping and narco-analysis, held that, by ordering such tests the High Court has converted the adjudication of a bail matter to that of a mini-trial and was in contravention of the first principles of criminal law

10 (2019) 14 SCC 522

jurisprudence and the statutory requirements. The Court held as under:

> "**6.** Having heard the counsel for the parties, it is surprising to note the present approach adopted by the High Court while considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case.
>
> **7.** In the instant case, by ordering the abovementioned tests and venturing into the reports of the same with meticulous details, the High Court has converted the adjudication of a bail matter to that of a mini trial indeed. This assumption of function of a trial court by the High Court is deprecated."

6.3. In ***State v. M. Murugesan***[11], this Court again reiterated that the Court's jurisdiction is limited to grant or

11 (2020) 15 SCC 251

refusal to grant bail, pending trial. In this case, the High Court, while taking a decision on bail application, had retained the file and directed the State to form a committee and seek its recommendations on the reformation and rehabilitation of convict/accused persons. The Court held that while ordering such directions the High Court has committed grave illegality and held that the jurisdiction under Section 439 CrPC ends when the bail application is finally decided. The Court held as under :-

> "11. We find that the learned Single Judge [M. Murugesan v. State, 2019 SCC OnLine Mad 12414] has collated data from the State and made it part of the order after the decision [M. Murugesan v. State, Criminal Original Petition No. 1618 of 2019, order dated 18-2-2019 (Mad)] of the bail application, as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the court."

7. Time and again, the act of Courts overstepping the bounds of jurisdiction, has clearly been frowned upon. The instant case is another such example. It is undisputed that the application for

bail filed before the High Court had become infructuous since the District Court had already released the respondent herein. The straightforward course of action that ought to have been adopted, therefore, was that the bail application would have been dismissed as such. No occasion arose for the Court to pass an order delving into the aspects of impermissibility of re-testing and/or wrongful confinement. Not only was the same outside the bounds, as discussed above, but it is erroneous on a further count that since the application was infructuous, the exercise of jurisdiction was entirely unjustified and contrary to law.

8. Regarding the submission pertaining to Section 69 of the NDPS Act, it is submitted that the actions of the authorities are protected from prosecution, in the absence of *malafide* intention. We refrain from making any comment on this issue for reasons that shall come to light later in this judgment.

9. The learned Amicus Curiae in his submissions has referred to judgments of this Court in ***Rudal Sah*** (supra), ***D.K. Basu*** (supra) and ***Nilabati Behera*** (supra). As has already been

noticed, these judgments were rendered by this Court under Article 32 jurisdiction, which is a remedy available to any person whose fundamental rights have been violated. So, whereas the Court has indeed held permissibility of grant of compensation, it has so done in the context of violation of fundamental rights. The undue restriction of liberty, i.e., without the backing of procedures established by law is unquestionably an affront to a person's rights but the avenues to seek recourse of law in connection therewith are limited to remedies as per law. However, none was availed in the present facts.

10. As such, we accept the submission of the Union of India that grant of compensation to the tune of Rs.5,00,000/- was without the authority of law. The order of the High Court, therefore, to this extent has to be set aside. Ordered accordingly. Appeal is allowed partly. The observations made hereinabove should not be taken to preclude any remedy that may be available to the respondent as per law. Hence, our observations are limited only to the correctness of the grant of compensation in the adjudication of a bail application.

11. We place on record our appreciation for the able assistance rendered by Mr. Pijush K. Roy, learned Senior Counsel, Amicus Curiae.

Pending applications, if any, shall stand disposed of.

……J.
(SANJAY KAROL)

……J.
(MANMOHAN)

New Delhi;
February 28, 2025.