HIGH COURT OF TRIPURA
AGARTALA

B.A No. 127 of 2020

For Petitioner (s)	:	Mr. B. Deb, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P.

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

17/12/2020

[1] This present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C hereunder) for grant of bail of the petitioner in West Agartala P.S. case No. 2020 WAG 149 under Sections 22(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act in short).

[2] After his arrest on 10.09.2020, the petitioner was first forwarded to the Special Court at Agartala on 11.09.2020. Bail application moved on his behalf before the learned Special Judge was rejected by the learned Special Judge vide. a detailed order dated 11.09.2020. Since then the petitioner is in custody. Thereafter, every time he was produced in court, bail application was moved on his behalf and each of those applications were rejected by the learned Special Judge. The applicant then moved a bail application before this court which was heard on 18.11.2020 when the following order was passed by this court:

"10. Having perused the case diary and the report, this court is of the view that no benefit under Section 437 of the NDPS Act can be extended to the accused person (the applicant) in this stage of investigation. However, this court finds that the location from where the seizure has been made is probably covered by the CCTV camera. As such, the investigating officer shall within 15 days from today take out the footage of the CCTV camera for the period when the seizure was carried out and bring out prints of relevant moments. Those viz(1) CCTV footage and (2) the prints thereof be produced before the court of the Special Judge (under NDPS Act), West Tripura, Agartala. The applicant may renew his prayer for bail in the court of the Special Judge (under NDPS Act). After perusing the report of the CCTV footage and other materials, the Special Judge may consider the bail application afresh, without being influenced by this order."

[3] Sequel to this order, the I.O submitted the CCTV footage along with the prints thereof as per direction of this court before the learned Special Judge (under NDPS Act) at Agartala and the learned Special Judge after examining the CCTV footage passed the following order on 02.12.2020:

"Allegedly the accused had in his possession huge quantity of contraband items namely, 20160 nos. of Spasmo Proxivon plus capsules involving commercial quantity and thereby alleged to have committed the offence punishable u/s 22(c) of the NDPS Act. There is nothing either in the record or in the CCTV footage to negate the allegation at this stage of investigation."

In view of such observation the learned Special Judge further rejected the bail application of the petitioner.

[4] The petitioner again moved this court seeking bail under Section 439 Cr.P.C by filing the instant petition.

[5] I have heard Mr. B. Deb, learned counsel for the petitioner and Mr. R. Datta, learned P.P on the matter of bail.

[6] Before I advert to the contentions of the learned counsel of the parties it would be appropriate to refer to the facts of the case in brief which are as follows:

Acting on a definite information, the Anti Narcotic Unit, Agartala comprising 2 (two) Officers of the rank of DSP, an Inspector of Police along with other Police Officers conducted raid in the house of the accused at T.G. Road, Krishnanagar and recovered and seized the following contraband from his possession.

1. *Two brown colour gunny bags containing total 20160 Nos SP(Spasmo proxyvon) plus Capsules of batch No.JU-10228.*
2. *One grey colured SAMSUNG DUOS Mobile phone IMEI No.3521 2810 8025 233/01 and 3521 2910 8025 231/01 with one Airtel SIM vide. contact no. 8974336158.*
3. *One grey colured SAMSUNG DUOS Mobile phone IMEI 3540 1009 6018 545/01 and 3540 1109 6018 543/01 with one Vodafone/SIM vide. contact No.8974777635. It has been noted that those were recovered from the possession of Uttam Bhattacharjee, owner of the said marriage hall.*

The said contraband was recovered from the possession of the petitioner in presence of witnesses and photographs with regard to such raid and seizure were taken by Police.

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[7] Having narrated the said facts, Sri Pradip Sarkar, Inspector of Police of the Anti Narcotic Unit, Agartala lodged FIR against the petitioner with the Officer-in-Charge of West Agartala Police Station at Agartala and based on such FIR, West Agartala P.S. case No. 2020 WAG 149 under Sections 22(c) and 25, NDPS Act was registered and the petitioner was arrested immediately. Hence, this application under Section 439 Cr.P.C has been filed for release of the accused on bail.

[8] As noted, I have already heard learned counsel of the parties on 11.12.2020. Mr. B. Deb, learned counsel appeared and made submissions for release of the accused on bail while Mr. R. Datta, learned P.P made submissions in opposition of the proposal for bail.

[9] Appearing for the petitioner, Mr. Deb, learned counsel has submitted that the premises from which the contraband was allegedly recovered and seized is already leased out for the last 5 (five) years to one Abhijit Deb and as such the petitioner does not have any control over the leased out premises at present. According to Mr. Deb, learned counsel, the leased out premises is a marriage hall which is entirely managed by the leasee and in any case if any contraband is recovered by police from such premises the petitioner cannot be held responsible for it. Further submission of Mr. Deb, learned counsel is that the location from where the contraband was allegedly seized is accessible by many people and as such the possibility of planting a false case against the petitioner cannot be ruled out. Mr. Deb, learned

counsel has relied on a decision of this High Court in B.A No. 119 of 2020 where this court vide. order dated 18.11.2020 bailed out the accused applicant charged under the NDPS Act on the ground that the godown from where the contraband was recovered was under the control of his tenant. Mr. Deb, learned counsel has also relied on the decision of this court in A.B. No. 61 of 2018 wherein this court vide. order dated 20.08.2019 found that the contraband was allegedly seized from an abandoned school room and there was none to have witnessed the accused petitioner storing the contraband in the said abandoned school room and on such ground released the accused on bail with stringent conditions. Learned counsel of the petitioner has further relied on the order dated 12.11.2020 of the High Court of Delhi in Bail Appln. No. 2848 of 2020 wherein the accused petitioner charged under Section 380 IPC was released on bail on the ground that the person captured in the CCTV was not identical with the accused petitioner. According to Mr. B. Deb, learned counsel the circumstances are same in the present case and therefore the present petitioner is also entitled to be released on bail.

[10] Mr. R. Datta, learned P.P on the other hand submits that the quantity of contraband recovered from the possession of the accused is of commercial quantity and as such the embargo provided under Section 37, NDPS Act with regard to bail applies to the present case. Mr. Datta, learned P.P having referred to the order dated

18.11.2020 of this court submits that this court by that order directed the Investigating Agency to produce the CCTV footage of the place from where the contraband was allegedly recovered and directed the Special Judge to consider the bail application of the accused after perusing the CCTV footage and pursuant to that order the learned Special Judge vide. his order dated 02.12.2020 rejected the bail application of the accused after perusal of the CCTV footage and noted in his order that there was nothing in the CCTV footage to negate the allegation against the accused at this stage. According to Mr. Datta, learned P.P, under such circumstances the accused cannot be released on bail. It is submitted by Mr. Datta, learned P.P that the place from where the contraband was seized is in exclusive possession of the accused and it is no part of the marriage hall which has been leased out by him to another person.

[11] I have perused the case diary and considered the submissions of learned counsel representing the parties. The witnesses whose statements have been recorded by the Investigating Officer have categorically stated that during the search operation conducted by the Anti Narcotic Unit, the contraband in 2 (two) gunny bags was recovered and seized from the physical possession of the accused petitioner in his house in their presence. Reportedly, the quantity of such contraband is commercial. Section 37 of the NDPS Act enjoins that the person accused of offences involving the commercial quantity under the NDPS

Act shall not be generally released on bail where the Public Prosecutor opposes the bail unless the court is 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.

[12] It has been specified under sub section 2 of Section 37, NDPS Act that the limitations on granting bail provided under Section 37 are in addition to the limitations provided under Cr.P.C or any other law for the time being in force with regard to bail. It is, thus, apparent that the NDPS Act, 1985 prohibits a liberal approach with regard to bail for offences committed under this act. With regard to the rigours on the matter of bail for offence punishable under NDPS Act, the Apex Court in **Maktool Singh Vs. State of Punjab** reported in **(1999) 3 SCC 321** held that except Section 26 and 27 of the NDPS Act, none of the offences under this Act are exempted from the purview of the rigours of Section 37. The observation of the Apex Court in paragraph 17 of the judgment is as follows:

"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 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."

[13] The Apex Court in plethora of decisions has laid down the parameters of consideration of a bail application under Section 439, Cr.P.C. Such parameters include the availability of prima facie material or reasonable grounds on the basis of which the court may form opinion that prima facie the accused can be said to have committed the offence. The other parameters are the nature and gravity of the accusation, severity of the punishment in the event of conviction, danger of the accused absconding or fleeing from the jurisdiction of the court in case of his release on bail, his antecedents, possibility of the witnesses being influenced by him and the possibility of the public interest being affected by his release on bail.

[14] Allegedly, huge quantity of contraband was seized from the possession of the petitioner which entails severe penalty under the NDPS Act. The materials available in the case diary prima facie support the case against the accused. It has been argued on behalf of the prosecution that there is a racket involved in storage and smuggling of narcotic drugs and psychotropic substances and detention and interrogation of the accused is absolutely necessary to book the other members of the racket.

[15] Keeping in mind the facts and circumstances of the case and the materials available against the accused, the provisions of law laid down in this regard and the parameters laid down by the Apex Court for granting of bail, this court is of the considered view that the

petitioner does not deserve bail at this stage of investigation. Resultantly, his bail application stands rejected.

[16] Before parting with the case, it is made clear that the observations made above will have no bearing on the trial of the case or consideration of any bail application of the accused at any stage because these observations are made only for the limited purpose of deciding the instant bail application.

With these observations, the bail application is disposed of.

Return back the case diary to learned P.P.

JUDGE

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