

C.R.M. 5679 of 2020
(Through Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Mahisadal** P.S. Case No. **43 of 2018** dated **11/02/2018** under Sections **20(b)(ii)(c)/29** of the NDPS Act.

And

In the matter of: - Ramakanta Patra @ Musa

....petitioner.

Mr. R. Ganguly

...for the petitioner.

Mr. S. Bardhan,

Mr. P.C. Maghi

...for the State.

Petitioner undertakes to affirm and stamp the petition/application as per Rules within a month of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conference.

Petitioner renews his prayer for bail. He submits that a coordinate bench had granted bail to a co-accused. It is further submitted that the quantity of narcotic substance seized from each of the accused ought to be considered separately. In that event, the offence falls under section 20(b)(ii)(B) of the NDPS Act of 1985 involving intermediate quantity of the narcotics.

Learned counsel appearing on behalf of the State opposes the prayer for bail and submits that charge in the instant case has been framed under Section 20(b)(ii)(C) of the NDPS Act which relates to possession of narcotics above commercial quantity. He further submits for the sake of clarity quantities recovered from the possession of each of the accused have been set out separately and the charge explicitly states that such possession was a conjoint one attracting the graver offence.

We have considered the rival submissions of the parties. Ordinarily we would have acceded to the discretion of a coordinate bench in the matter of grant of liberty. However, in view of the statutory restrictions under Section 37 of the NDPS Act governing the grant of bail in a case involving possession of narcotic substance above commercial quantity, we are constrained to deal with this matter in a different perspective.

Having examined the substance of charge set out at page 15 of the petition, we find that the charge in this case has not only been framed under Sections 20(b)(ii)(C) of the NDPS Act but the expression “conjointly” is categorically stated in the body of the charge itself. Hence, the clear and unequivocal accusation in this case is one of conjoint possession of narcotic substance recovered from the petitioner and co-accused persons. Accordingly, total quantity of narcotic substance seized from all the accused persons is the substratum of the charge which falls within the ambit of “commercial quantity” punishable under section 20(b)(ii)(C) of NDPS Act. At this preliminary stage and prior to commencement of trial, it is impermissible to rewrite the prosecution case by holding recovery from each of the accused persons must be considered piecemeal and not conjointly as stated in the charge sheet. Thus, we are unable to persuade ourselves to grant bail to the petitioner, particularly in view of the materials on record relating to joint possession of narcotic substance above commercial quantity and in the light of the statutory restrictions under Section 37 of the NDPS Act.

However, in view of the period of detention suffered by the

petitioner i.e. over 900 days, we request the Special Court to take prompt steps for conclusion of trial at an early date.

The application for bail is, thus, rejected.

(Moushumi Bhattacharya, J.)

(Joymalya Bagchi, J.)