

20.10.2020
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CRM 5692 of 2020
(Via Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kotwali P.S. Case No.663 of 2019 dated 15.10.2019 under Sections 22(c)/25/29 of the NDPS Act.

And

In the matter of: Rukumuddin Ahmed & Ors.

....Petitioners.

Mr. Sabir Ahmed
Mr. H. S. Poddar
Mr. S. Sarkar
Mr. A. Saha

...for the Petitioners.

Mr. Aniruddha Biswas

...for the State.

Petitioners seek statutory bail. It is contended that he is in custody for a year. Statutory period for investigation initially expired on 9th March, 2020 which came to be extended till 9th May, 2020. On that date, as no extension prayer had been filed prayer was made for statutory bail. Extension prayer was finally made by the Public Prosecutor on 13th May, 2020.

In the aforesaid conspectus, petitioners submit that they had availed their statutory right of default bail which could not have been whittled down either by a subsequent application for extension or submission of police report.

Learned lawyer for the State opposes the prayer for bail and submits that subsequently prayer for extension was allowed by order dated 19.06.2020.

We have given anxious consideration to the rival contentions of the parties. Admittedly, petitioners availed of their right to statutory bail on 9th May, 2020, when no application for extension of the period of detention had been filed. As the petitioners had availed of their right prior to the filing of extension petition which ultimately came to be filed on 13th May, 2020, we are of the opinion their right to statutory bail cannot be abrogated by the subsequent prayer for extension of detention under Section 36A (4) of the NDPS Act. Learned Special Court failed to address this issue and illegally remanded the petitioners to further detention by the impugned order dated 19.06.2020.

It is trite law when statutory bail has been availed of subsequent filing of charge-sheet would not deny the petitioners of their liberty (see: Uday Mohanlal Acharya vs. State (2001) 5 SCC 453)).

In view of the aforesaid discussion, we are inclined to grant bail to the petitioners.

Accordingly we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.20,000/- (Rupees Twenty thousand only) each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Court under NDPS Act, 2nd Court, Jalpaiguri subject to condition that the petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

CRM 5692 of 2020 is disposed of.

The parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Md. Nizamuddin, J.)

(Joymalya Bagchi, J.)