

03.09.2020

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sl no. 35

C.R.M. 6168 of 2020
CRAN 1 of 2020 (old CRAN 4668 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. 800 of 2018 dated 24.11.2018 under sections 20(b)/25 of the NDPS Act

And

In Re : Ajit Deb Barma petitioner

Mr. D K Sinha

Mr. S Patra

..... for the petitioner

Mr. Niloy Chakraborty

..... 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 conferencing.

Accordingly, the application being 4668 of 2020 is disposed of.

It is submitted on behalf of the petitioner that he is in custody for more than two years. It is further submitted that police report was filed without chemical examiner's report. Hence, the police report is an incomplete one and the petitioner was entitled to statutory bail. Learned counsel relies on a decision of the **Punjab & Haryana High Court** in CRR 791 of 2016 dated 23.4.2016 in that regard.

It is also submitted that the petitioner is suffering from various ailments and there is possibility of his contracting covid infection in the correctional home.

Learned counsel for the State opposes the prayer for bail. He submits that the police report was filed within the stipulated time frame and there is no infraction of law.

It is further submitted that the supplementary charge sheet containing chemical examiner's report showing the seized substance as ganja has already been filed. Due to prevailing pandemic condition, the prosecution was unable to proceed with the matter.

We have considered materials on record. Police report is defined under section 173(2) Cr.P.C. Sub-section (5) of section 173 Cr.P.C enumerates the documents which shall accompany a police report.

A chemical examiner's report is a document which may accompany the police report as per the aforesaid sub-section but does not constitute the police report itself in terms of section 173(2) Cr.P.C.

The law in this regard has been succinctly enunciated by the apex court in ***Dinesh Dalmia vs. CBI*** (2007) 8 SCC 770 that police report under section 173(2) shall not be treated as vitiated if it is unaccompanied by documents referred to in section 173(5) Cr.P.C. It is relevant to note chemical examiner's report has already been filed in this case.

Hence, we are unable to accept the contention of the learned counsel appearing for the petitioner that his client is entitled to statutory bail. That apart, there are sufficient materials to show that the petitioner was involved in inter-state transportation of narcotic substance i.e. ganja above commercial quantity. Supplementary

charge sheet discloses that the materials seized from the joint custody of the petitioner and other accused persons is ganja.

In view of the aforesaid fact and statutory restrictions under section 37 of the NDPS act, we are not inclined to grant bail to the petitioner.

With regard to his health condition, we direct the Superintendent, Correctional Home to extend necessary medical attention to the petitioner including institutional treatment, if necessary.

Prayer for bail is rejected.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)