

29.09.2020

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**CRM 6820 of 2020
CRAN 1 of 2020
(Via Video Conference)**

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with Special Case No.36 of 2019 arising out of Kaliachak P.S. Case No.803 of 2019 dated 05.12.2019 under Sections 18(b)/29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: **Rabiul Mahaldar @ Dhapa and anr.**

....Petitioners.

Mr. Sekhar Basu
Ms. Rajnandini Das

...for the Petitioners.

Mr. Sanjoy Bardhan
Mr. C.R. Ghosh

...for the State.

The petitioners undertake to affirm and stamp the petition as per the Rules within one week of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

The petitioners complain that the mandatory provisions of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 were not complied with in this case and, as a consequence, there can be no conviction of the petitioners. The petitioners seek bail primarily on such ground.

The matter had been adjourned on a previous occasion for the entire records to be produced. It appears from such records that the magisterial presence was ensured and some of the provisions

may have been complied with. No final opinion in such regard is expressed so as not to prejudice either side. But what is evident from the records is that the investigating agency was alive to the requirements of Section 52A of the said Act.

It is possible that not every limb of the statutory mandate may have been complied with. Once it is seen that the investigating agency was alive to the requirements of Section 52A of the said Act and there are records in support thereof, whether or not all the conditions were complied with may be left to be decided at the trial.

The State says that commercial quantity of contraband was recovered from the joint possession of the petitioners. The State also relies on a report of the Forensic Science Laboratory which confirms the samples that were sent to be contraband. In view of such position, the petitioners did not qualify to obtain bail.

The State also relies on an order of a coordinate Bench to the effect that the alleged non-compliance of Section 52A of the Act is a matter for consideration at the trial. The petitioners say that in view of the prevailing Supreme Court dictum on such aspect which was noticed in another Division Bench order, the complete non-compliance of the requirements of Section 52A of the Act would vitiate the entire proceedings.

It must be said that if the records do not reveal any compliance with Section 52A of the Act, a view may be taken. However, when the records reveal that the investigating agency was alive to the requirements of Section 52A of the Act and certain steps were taken in such regard, whether the compliance was in accordance with every requirement of the provisions or not would be a matter which would be left for the trial court to consider.

On the basis of the material now available, the prayer for bail cannot be acceded to.

CRM 6820 of 2020 and the interim application therein are disposed of.

(Sanjib Banerjee, J.)

(Aniruddha Roy, J.)