

24.12.2020
Court No.28
SL No.29
AP

CRM 7847 of 2020
(Through Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **North Port** P.S. Case No.**62 of 2019** dated **14.09.2019** under Sections **21(C)/29** of the NDPS Act.

And

In the matter of: **Goutam Naskar**

....Petitioner.

Mr. Ranadeb Sengupta,
Mr. Gobinda Chandra Baidya,
Mr. Bishnupada Naskar

... for the Petitioner.

Mr. Sanjoy Bardhan,
Mr. Palash Chandra Majhi

...for the State.

The petitioner seeks statutory bail and submits that initial period of detention under Section 36A(4) of the NDPS Act was extended vide order dated 11th March, 2020 till 13th September, 2020. Challenging the legality of such extension the petitioner had approached this court which did not find favour with a coordinate bench of this court. However, upon expiry of the maximum period of statutory detention i.e. up to one year the petitioner had sought for statutory bail. Trial court by order dated 18th September, 2020 turned down such prayer. Hence, the present application.

Learned lawyer for the State opposes the prayer for bail and submits that the period of detention under Section 36A(4) of the NDPS Act was initially extended up to 8th September, 2020. No prayer for statutory bail has been filed before the court below. Hence, trial court rejected his prayer for bail on merits.

Petitioner was arrested on 14th September, 2019. Initial period of detention as per Section 36A(4) of the NDPS Act expired on 12th March, 2020. On 11th March, 2020 such period was extended till 8th September, 2020. Assailing legality of such extension the petitioner approached this court. By an order dated 26th June, 2020 a Co-

ordinate Bench of this Court declined to grant relief to the petitioner. After the expiry of the extended period as aforesaid, the petitioner sought statutory bail. Referring to the earlier order of rejection by this Court, learned Judge turned down such prayer.

We have considered the materials on record. No further extension was sought for on or before 8th September, 2020. Hence, upon expiry of such extended period the petitioner was entitled to statutory bail. Under such circumstances the prayer for bail of the petitioner came to be rejected. It is contended that the petitioner had not sought for statutory bail but claimed bail on merits. We are unable to accept such contention. Statutory bail of the petitioner is a right and ought to be made available to an undertrial in detention [see ***Hussainara Khatoon (III) Vs. State of Bihar, (1980) 1 SCC 93***]. That apart, order rejecting bail refers to the statutory period of detention under Section 36A(4) of NDPS Act making it amply clear the petitioner had, inter alia, sought statutory bail before the court below upon expiry of extended period of detention. Hence, it was incumbent on the part of the Judge while considering the prayer for bail of the petitioner to test the legality of further remand in the light of his right to statutory bail. Trial court singularly failed to exercise such jurisdiction and erroneously referred to the earlier order of rejection by this court on 26th June, 2020. Rejection of bail by this court was on a completely different premise. At that stage, the petitioner had assailed the legality of the extension of the period of statutory detention which did not find favour with this Court. No such issue arose before the trial court when the petitioner sought for bail after the extended period of detention had come to an end. Hence, he was entitled to statutory bail and ought to have been offered the same. Subsequent filing of police report is of little consequence as the

petitioner had sought for bail upon expiry of the extended period, which for aforesaid reasons was illegally turned down [see ***Uday Mohanlal Acharya Vs. State of Maharashtra, 2001 (5) SCC 453*** and ***Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67***]. In the light of the aforesaid discussion, we are inclined to grant statutory bail to the petitioner.

Let the petitioner be released on bail upon furnishing a Bond of Rs.20,000/- (Rupees Twenty Thousand Only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court under NDPS Act, Calcutta subject to the condition that while on bail the petitioner shall appear before the learned trial court regularly till disposal of the trial and the petitioner shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail is, thus, allowed.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)