

17.11.2020
SL No.42
Court No.12
(gc)

CRM 7996 of 2020

(Via Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **N.D.P.S. Case No. 137/2019**, arising out of **NCB Crime No.14/NCB/KOL/2019** dated **28.07.2019** under Sections **25A/28/29** of the N.D.P.S. Act.

And

In the matter of: **Shariful Islam @ Md. Shariful Islam @ Sariful Islam.**

....Petitioner.

Mr. Y.J. Dastoor, Ld. A.S.G.,
Mr. Phiroj Edulji,
Mr. Sagar Saha,

...for the NCB.

Although the petitioner is not represented but considering the detention of the petitioner, we invited the learned Additional Solicitor General to address us on the right of the petition to renew his prayer for bail in view of the change in law with regard to Section 67 of the N.D.P.S. Act.

The earlier Co-ordinate Bench in the order dated 20th October, 2020 recorded the submissions of the learned Additional Solicitor General that the application for bail of the petitioner was rejected twice on an earlier occasion. There is no dispute that the petitioner applied twice earlier and his application on both occasions was rejected. However, the Coordinate Bench at that point of time proceeded on the basis that he was found possessing more commercial material of narcotic substance than the permissible amount which may not be factually correct as nothing as such was recovered from him. Moreover, the observation of the Coordinate Bench in the order dated 18th

November, 2019 that the petitioner made a voluntary inculpatory statement admitting the crime under Section 67 of the N.D.P.S. Act would be a relevant factor for not granting bail to the petitioner may not be a ground now due to change in law.

Mr. Dastoor, learned Additional Solicitor General has assisted this Court in reviewing the said order in the light of the judgment of the Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu*** reported in **2020 SCC Online SC 882**. In answering the reference the majority view penned by Justice R.F. Nariman held *"that a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."* In view of the change in law since the earlier two orders of rejection the prayer for bail now needs to be revisited. It appears that alleged confessional statement was obtained under Section 67 of the NDPS Act which now cannot be relied upon and used as a confessional statement at the trial of the offence. This is a relevant consideration in deciding the present application coupled with the fact that no narcotic substance was recovered from him.

Accordingly, we allow his prayer for bail. We direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the NDPS cum learned Additional District Judge, 5th Court, at Berhampore, Murshidabad and to comply with the provisions of Section 437(3) of the Code of Criminal Procedure. The petitioner shall appear before the learned trial court on every date till the conclusion of trial.

In the event the petitioner fails to comply with any of the conditions mentioned hereinbefore, it would be open to the trial court to cancel the bail without any further reference to this Court.

We have been informed by the learned Additional Solicitor General that the trial court has fixed 3rd December, 2020 for production. It is needless to mention that the petitioner shall be present on that date. The learned Trial Judge is requested to proceed with the matter as expeditiously as possible without granting any unnecessary adjournment to either of the parties unless there are unavoidable reasons. We make it clear that on 3rd December, 2020 all parties should be present and none of the parties shall seek any adjournment.

Accordingly, the application for bail being CRM 7996 of 2020 is allowed and disposed of.

Since the petitioner is not represented, this order shall be immediately communicated to the petitioner through the Jailer by the office of the State Legal Services Authority. The concerned DALSA shall render all assistance in ensuing communications of this order.

This order shall be immediately communicated to the Member Secretary, State Legal Services Authority for compliance.

All parties are to act on a website copy of this order on the usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)