

25-11-2020
k.b/b.r.
Item no.1
Suppl. List.
Bail rejected
Crt.11

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction

C.R.M 8014 of 2020
Mahabub Rahaman @ Mahabur Rahaman @ Empha
-vs-
The State of West Bengal
(Via video conference)

In Re: An application for bail under Section 439 Cr.P.C in connection with NDPS Case No.13 of 2020, arising out of Kaliachak P.S. Case No. 91 of 2020 dated 02.02.2020 under Sections 21(c) of NDPS Act, 1985.

Mr. Debasis Roy
Mr. Avik Ghatak ...for the petitioner.

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta ... for the State.

The advocate-on-record for the petitioner undertakes to affirm and properly stamp the petition as per the rules within 48 hours of resumption of normal functioning of the court. The petition is taken up through video-conference on the basis of such undertaking.

Mr. Roy, Learned Advocate appearing for the petitioner submits that although seizure was effected from the present petitioner on 2nd February, 2020, however, the sample was sent for examination in the month of July, 2020 and the initial charge sheet was submitted without any report of the Chemical Examiner. He urges that in view of the sample being sent in a delayed manner and the charge sheet being filed without the Chemical Examiner's report, the same is no charge sheet in the eye of law and the Investigating Authorities mala fidely wanted to cover up the statutory period of 180 days thereby denying the petitioner's bail.

Mr. Roy Chowdhury files an affidavit explaining the delay for sending the report of the CFSL, Chandigarh. Such explanation starts from paragraph 6 of the affidavit so filed by the Investigating Officer of the case.

We do not find such explanation to be satisfactory. Unnecessarily taking advantage of COVID-19 situation cannot be allowed when the accused was arrested and detained in custody.

We have gone through the materials of the prosecution and prima facie we are of the opinion that the seizure was of commercial quantity of contraband allegedly from the possession of the present petitioner. As such the provisions of Section 37 of the NDPS Act are attracted and the petitioner is not entitled to be released on bail.

Accordingly, the prayer for bail of the petitioner is rejected.

In view of the conduct of the Investigating Officer of the case, we direct the Superintendent of Police, Malda to conduct an enquiry to find out the details regarding the delay for sending the sample from 3rd February, 2020 when the inventory was prepared till 2nd July, 2020. The explanation given in the affidavit, thereby dragging the time from 29th February, 2020 is unacceptable.

The Superintendent of Police, Malda will submit the enquiry report before Learned Special Court under the NDPS Act within a period of four weeks from date. Once such report is submitted by the Superintendent of Police, Learned Special Court is empowered to recommend or direct the Superintendent of Police to take appropriate action against the Investigating Officer.

With the aforesaid observation, the application for bail, being

CRM No. 8014 of 2020 is disposed of.

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

[Tirthankar Ghosh, J.]

[Subrata Talukdar, J.]