

ADDL 5.
December 1, 2020.
SG

CRM 8037 of 2020

In Re. An application for bail under Section 439 of the Code of Criminal Procedure in connection with Serampore Police Station Case No.173 of 2020 dated 23.06.2020 under Sections 21(c) of NDPS Act.

In the matter of: Md Jalil @ Jang

...petitioner.

Mr Sekhar Basu
Mr Antarikhya Basu
Ms Madhumita Basak

... for the petitioner.

Mr Binay Panda
Ms Puspita Saha

... for the State.

The petitioner undertakes to affirm and 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.

The petitioner complains of several illegalities on the part of the investigating agency, both at the time of the alleged seizure of the contraband and otherwise.

Apparently, one Lal Babu and another Nazim were arrested on June 23, 2020 with commercial quantity of contraband and, though this petitioner was not involved with such transaction, this petitioner's name was included as an accused and this petitioner was pursued. The petitioner says that the investigating agency claims that within a day or two this petitioner was also apprehended with commercial quantity of codeine mixture.

However, samples were apparently drawn during the time of seizure and sent for chemical analysis. It also appears that Lal Babu who had already been arrested was shown as a seizure witness in this case. The petitioner refers to Section 52A of NDPS Act, 1985 and places a judgment reported at (2016) 3 SCC 375 (*Union of India vs Mohanlal*) to suggest that the mandatory requirement of the provision is for samples to be drawn in the presence of a magistrate. The petitioner also refers to an order of this court passed on March 14, 2019 noticing the law laid down in *Mohanlal*.

Considering the gross irregularities in this case, which border on illegality, it does not appear that on the basis of the material available, the conviction of the petitioner may be obtained.

In such view of the matter, particularly since the samples for chemical analysis were drawn in the absence of a magistrate and it is unclear as to the sanctity of maintaining the rest of the contraband allegedly seized, the petitioner is entitled to bail.

It will be open to the investigating agency to take appropriate steps in accordance with law.

The petitioner will be enlarged on bail upon furnishing a bond of Rs.1,00,000/- (Rupees One Lakh Only) with two sureties of Rs.50,000/- (Rupees Fifty Thousand Only) each, one of whom must be local, to the satisfaction of the appropriate court in Hooghly. The petitioner will not leave the State without the previous permission of the trial court. The petitioner will report to the Officer-in-Charge of the local police station within whose jurisdiction the petitioner now resides till the completion of the trial, if any charges are pressed against the petitioner. The petitioner will also

indicate the petitioner's present place of residence before being released on bail.

CRM 8037 of 2020 is disposed of.

(Sanjib Banerjee, J.)

(Aniruddha Roy, J.)