

20.11.2020

CRM 8891 of 2020

Court No. 16
Item No. 06
nandy/biswas

(Via Video Conference)

(BAIL – REJECTED)

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure filed on 03.11.2020 in connection with Balurghat Police Station Case No. 954 of 2014 dated 12.12.2014 under Section 21(c)/22(c)/23(c)/27A of the Narcotic Drugs and Psychotropic Substances Act. (Special Case No. 22 of 2014)

and

In the matter of: **Akshay Mali @ Akhay Mali**

..... Petitioner

Ms. Bursa Khatoon, Advocate

.....for the Petitioner

Mr. P.K. Dutta, Advocate

Mr. P.K. Ganguly, Advocate

.....for the State

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

The petitioner claims that no contraband was recovered from the possession of the petitioner but he has been pursued merely on the basis of the statement of a person who was arrested with commercial quantity of Phensedyl in his possession.

The State says that the petitioner surrendered only in February, 2020 though the case is of the year 2014. The State says that a previous application for anticipatory bail was rejected by this Court and even after the petitioner surrendered, his prayer for bail was declined again by this Court.

According to the State, this petitioner along with Choton Singh were apprehended with commercial quantity of contraband in their joint possession. However, this petitioner disembarked from the motorcycle and fled on December 12, 2014. The State relies on the identical statements of three independent witnesses recorded on the

same date. All the witnesses claimed that Choton Singh revealed immediately that it was this petitioner who had run away and fled the spot.

Ordinarily, if the State pursues a person under the Act of 1985 without recovering anything from the possession, the Court seeks sufficient material to come to a prima facie satisfaction that such person may be involved in the transaction. The mere statement of a co-accused does not weigh much with the Court in such a situation. However, when the allegation is that the concerned person fled the spot at the time the raid was conducted and independent witnesses testify or assert that the person arrested revealed the identity of the person who fled, there would be sufficient material to proceed against such person.

In this case, the statements of three independent witnesses have been shown. Further, the same prayer was rejected in June, 2020 in CRM 4555 of 2020 and there does not appear to be any change in circumstances since the previous rejection of the petitioner's prayer.

Accordingly, the petitioner's prayer for bail is rejected again.

CRM 8891 of 2020 is disposed of.

(Sanjib Banerjee, J.)

(Hiranmay Bhattacharyya, J.)