

(via Video conference)

02 17.11.2020

Dd/aloke

CRM 9023 of 2020

In Re – An application for bail under Section 439 of the Code of Criminal Procedure in connection with NCB Crime No. 04/NCB/KOL/2020 dated 15.01.2020 under Sections 20(b)(ii) (c)/23(c)/29 of the NDPS Act and now numbered as N-18/2020.

In the matter of : **Rizwan Khan**Petitioner

Mr. Debasish Kar
Mr. Arka Chakraborty
Mr. Subhajit Chowdhury
Mr. Husen Mustafi
....for the petitioner

Mr. Y. J. Dastoor, Id. ASG
Mr. Phiroze Edulji
Mr. Uttam Basak
... ...For the NCB

This is an application of one Rizwan Khan who is arraigned as an accused under different provisions of the NDPS Act. The material on record disclose that the allegations relate to involvement in dealing with commercial quantity of charas.

Learned counsel for the petitioner argued that except a forced custodial confession there is nothing to connect the accused to the allegations. He also pointed out that the material on record do not, in any manner, inculcate the petitioner.

Learned Additional Solicitor General opposing the application argued that the gravity of the offence taken note of by the trial court, does not call for any look contrary to what has been done by the trial court and that the petitioner is not eligible for grant of bail having particular regard to Section 37 of the NDPS Act.

The fact of the matter remains that the case is registered under Section 8(c) read with Sections 17/18/27A/ 29 of the NDPS Act. The trial court has noted that the case relates to commission of an offence involving commercial quantity.

We have perused the complaint made by the duly authorised competent authority before the trial court. It also delineates the sequence of events leading to the arrest of the petitioner. Keeping aside the issue as to whether the statement given by the accused was used as an incriminating material as against him, we may notice even before that the investigating authority had material with it which definitely pointing a finger to the accused even before he was apprehended. The information received by the Narcotics Control Bureau (NCB) led its officers to conduct requisite search among the articles in the cargo section of the Air Port in International transit. The particular item was booked in the name of the petitioner. That led to him being traced out and inculpated. Whether the statement given by him thereafter is one which is a voluntary confession or whether any such statement was ever made and if so, whether he had an opportunity of retracting the same or not, are all issues which may arise for consideration only during the course of trial. At the prima facie stage of consideration of the material on record to assess whether a prima facie case has been made out sufficient enough to bring the case under the provisions of Section 37 of the NDPS Act, we are of the view that there is no error of jurisdiction, illegality or impropriety or infirmity in the decision of the trial court rendered on 14.10.2020 rejecting the application for bail. On independent consideration, we also do not find any ground to allow the application for bail as placed before us.

Accordingly, the application for bail is rejected.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)