

24.12.2020
Court No.28
SL No.38
AP

CRM 9239 of 2020
(Through Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Mathabhanga** P.S. Case No.**46 of 2020** dated **30.01.2020** under Sections **20(b)(ii)(c)/29** of the NDPS Act read with Section **353** of the Indian Penal Code.

And

In the matter of: **Ananda Sarkar & Anr.**

....Petitioners.

Mr. Subhasish Misra

... for the Petitioners.

Mr. Aditi Shankar Chakraborty,

Mr. Aniruddha Biswas

...for the State.

It is submitted on behalf of the petitioners that they are not the owners of the land wherefrom narcotic substance above commercial quantity was recovered. Statutory requirements under Sections 50/52A of the NDPS Act have not been complied with. They are in custody for more than ten months.

Learned lawyer for the State opposes the prayer for bail and submits that the petitioners chased away members of the raiding party who had gone to the spot for recovery of narcotic substance and destruction of ganja plants. Seizure was from sheds, which were in the control and dominion of the petitioners. Hence, compliance of Section 50 of the NDPS Act does not arise. Section 52A of the NDPS Act is a post seizure exercise and does not affect legality of seizure.

We have considered the materials on record including the statements of witnesses. Petitioners played an active role in resisting members of the raiding party from recovering narcotic substance, which was kept in sheds, built on vested land. Aforesaid conduct of the petitioners and other attending circumstances give rise to an irresistible conclusion that the petitioners were in occupation and dominion over the sheds where narcotic substance i.e. 84 kg. of ganja was illegally

stored. Recovery of narcotic substance from the shed in control and dominion of the petitioners would not attract Section 50 of the NDPS Act. Section 52A of the NDPS Act enjoins mandatory destruction of seized narcotic substance and use of certificate issued by appropriate magistrate as prima facie proof in lieu of physical production of seized articles. Such procedure has been declared mandatory in ***Union of India Vs. Mohanlal (2016) 3 SCC 379***. However, procedure engrafted in Section 52A is a post seizure exercise to ensure prompt destruction of narcotic substance so that seized material may not be misused.

Such exercise is a post seizure event. Failure to comply with such requirement does not affect the legality of seizure which precedes such exercise. Impact of its failure, therefore, may be assessed in the course of trial in the light of the other materials on record including the possibility of physical production of seized materials during trial. Under such circumstances and in the light of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioners.

The application for bail is, thus, rejected.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)