

25.01.2021

Item No.2

Ct.No.28

Subha

Allowed

C.R.M. 279 of 2021

(Via Video Conference)

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure.

And

In the matter of : Samim Sk. ... Petitioner.

Mr. Amitabha Karmakar
Mr. Arup Kumar Bhowmick

... For the Petitioner.

Mr. Ranabir Roychowdhury,
Mr. Sanjoy Bardhan
Mr. Rudradipta Nandy

... For the State.

The present application under Section 439 of the code of Criminal Procedure has been preferred by the petitioner in connection with Baishnabnagar P.S. Case No. 204 of 2020 dated 30-04-2020 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act (Special Case No.30 of 2020).

The learned advocate appearing for the petitioner submits that the petitioner was arrested and produced before the Learned Judge, Special Court, 2nd Court, Malda on 30th April, 2020 for the alleged offence punishable under Section 21(c) read with Section 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985('NDPS Act'). His prayer for bail was rejected. As no charge sheet was filed within the mandatory period of 180 days, the petitioner filed an application for statutory bail under Section 167(2) of the Code of Criminal Procedure, 1973('CrPC') on 28th October, 2020 before the learned Chief Judicial Magistrate, Malda since there was no available Special Court at that juncture. However, on the said date, on a purported plea that "*the period of detention cannot be calculated*", the petition was sent to the Additional District Judge, 3rd Court, Malda. Two days thereafter, i.e., on 30th October, 2020, the charge-sheet dated 27th October, 2020, was filed before the learned Chief Judicial Magistrate, Malda. On the next date fixed for hearing, i.e., on 18th November, 2020, the petitioner renewed his prayer for statutory bail stating *inter alia* that the charge sheet had not been filed within the statutory period and that the investigating officer did not also pray for any extension of time. The petitioner's prayer was, however, rejected by the Learned Judge, Special 3rd Court, Malda.

He argues that the learned court below misconstrued the mandate of Section 167(2) and erred in rejecting the petitioner's prayer for statutory bail though he had rightly invoked the provisions thereof, after completion of the mandatory period of 180 days for filing of charge sheet.

The learned advocate appearing for the State opposes the petitioner's prayer and submits that upon completion of investigation, charge sheet was prepared *vide* memo dated 27th October, 2020 and was filed before the competent court on 30th October, 2020, prior to disposal of the petitioner's application for bail dated 28th October, 2020. As such there is no infirmity in the order dated 18th November, 2020.

Indisputably, the petitioner was remanded to judicial custody on 30th April, 2020 and the mandatory period of 180 days prescribed for filing of final report ended on 27th October, 2020, excluding the date of remand and including the date of filing of charge sheet. The charge sheet was thus, admittedly filed on the 183rd day.

A perusal of the order dated 28th October, 2020 would reveal that consideration of the petitioner's prayer for statutory bail was mechanically deferred and the subsequent submission of the charge sheet could not have been a ground towards denial of statutory bail to the petitioner.

The right to statutory bail is not a mere statutory right but is part of the procedure established by law under Article 21 of the Constitution of India. [See the judgments delivered in the cases of *M Ravindran versus Intelligence Officer, Directorate of Revenue Intelligence reported in 2020 O Supreme (SC) 627* and *Bikramjit Singh VS State of Punjab, reported in 2020 O Supreme (SC) 586*]

Applying such proposition of law to the facts of this case, we are of the opinion that the petitioner is entitled to statutory bail.

Accordingly, the petitioner, namely, **Samim Sk.**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only), with two sureties of the like amount, one of whom must be local, to the satisfaction of the Learned Judge, Special 3rd Court, Malda under the N. D. P. S. Act, subject to further condition that the petitioner shall not leave the jurisdiction of Baishnabnagar Police Station without the leave of the trial court and shall attend the trial court on every date of hearing.

The application being CRM 279 of 2021, is disposed of.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)