

15.03.2021

Item No.27

Ct.No.28

dc.

Rejected

C.R.M. 785 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 : **Naresh Thakur @ Noresh Thakur**
... Petitioner.

Mr. Ayan Basu,
Mr. Rajnish Kumar Kalawatia,
Mr. Prabir Kumar Das,
Mr. Sourav Bera,
Mr. Sumit Routh

... For the Petitioner.

Mr. Sanjoy Bardhan,
Mr. C. R. Ghosh

... For the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Baruipur P.S. Case No. 528 of 2019 dated 12.03.2019 which culminated into charge-sheet being Jibantala P.S. charge-sheet No. 1628 of 2019 dated 09.08.2019 under Sections 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Case No. 27 of 2019).

Mr. Basu, learned advocate appearing for the petitioner submits that there had been no recovery of any contraband substance from the possession of the petitioner. He was only the taxi driver and the contraband substance

was seized from one Taimur Khan @ Babulal Khan. The said Taimur Khan @ Babulal Khan has already been enlarged on bail on 9th December, 2020 by the learned sessions court. Contraband substance was also recovered from another taxi of which the driver was one Prince Paswan. The said person has also been enlarged on bail by an order dated 5th December, 2020. Mr. Basu further submits that the present petitioner is similarly situated with the accused, namely, Prince Paswan. He further contends that the provision of Section 52A of the N.D.P.S. Act had not been complied with and such fact weighed with the learned sessions court in granting bail to Prince Paswan. Upon completion of investigation, charge-sheet has also been filed and as such, further detention of the petitioner, who is in custody for more than two years, is not warranted.

Per contra, Mr. Bardhan, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the seizure list which discloses that contraband substance, above commercial quantity, was seized from the possession of the petitioner and others.

We have perused the materials in the case diary including the seizure list wherefrom, *prima facie*, it appears that the petitioner is directly involved in the alleged offence. As regards the contention of Mr. Basu that the provisions of Section 52A have not been complied with, it appears that the selfsame issue was agitated when the petitioner approached

this Court earlier and in the order dated 27th November, 2019 passed in CRM 11056 of 2019, it was categorically observed, *inter alia*, that “*it is open to the petitioner to rebut the presumption with regard to conscious possession in the course of trial*”. In the said conspectus and considering the gravity of the offence and the extent of complicity of the petitioner in the alleged offence, we are not inclined to exercise any discretion in favour of the petitioner. As such, the petitioner’s prayer for bail is **rejected**.

The application for bail, being CRM 785 of 2021, is, thus, dismissed.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)