

25-03-2021
subha
Ct. no. 28
Item no.134

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction

C.R.M. No. 1372 of 2021

Samir Mondal

-vs-

The State of West Bengal
(Via video-conference)

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection Malda Police Station Case No.463 of 2020 dated 29th October, 2020 under sections 21(C)/29 of the N.D.P.S Act.

Mr. Amitabha Karmakar
Mr. Arup Kumar Bhowmick

...for the petitioner.

Mr. Sudip Ghosh
Mr. Apurba Kumar Datta

... for the State.

Mr. Karmakar, learned advocate appearing for the petitioner submits that the petitioner was arrested in connection with Malda Police Station Case No. 463/2020 dated 29th August, 2020 on 29th August, 2020. As the charge sheet was not filed within 180 days, the petitioner submitted an application for statutory bail on the 181st day. The same was considered and the petitioner was enlarged on bail subject to certain conditions as incorporated in the order dated 26th February, 2021. The said order of bail was passed in presence of learned Special Public Prosecutor who also did not dispute the fact that the statutory period for submission of charge sheet was over. Surprisingly, the learned Judge, Special 3rd Court, Malda under the N.D.P.S Act recalled the said order later on the same date observing that it subsequently came to the notice of the court that a charge sheet being no.97 of 2021 dated 17th February, 2021 had been submitted

on the self-same date i.e. on 26th February, 2021 by a civic volunteer.

According to Mr. Karmakar, having enlarged the petitioner on bail, the learned judge could not have recalled the said order later since purportedly a charge sheet being no.97 of 2021 dated 17th February, 2021 was submitted on 26th February, 2021 by a civic volunteer.

Mr. Ghosh, learned advocate appearing for the State opposes the petitioner's prayer for bail and submits that upon completion of investigation, charge sheet was prepared *vide* memo dated 17th February, 2021 prior to expiry of a period of 180 days and as such the learned court rightly recalled and cancelled the order enlarging the petitioner on bail. Furthermore, the present application is not maintainable and the petitioner ought to have challenged the recalling order by a revisional application.

Indisputably, the petitioner was arrested on 29th August, 2020 and the charge-sheet was not submitted within 180 days. On the 181st day, the petitioner applied for statutory bail. Such prayer was considered and allowed by the court upon arriving at a finding that '*CS has not been submitted till date and there is no prayer and/or order in terms of provision under Section 36A (4) of NDPS Act*'. The order was passed in presence of the learned Special Public Prosecutor who also made a categorical submission that '*the statutory period for submission of CS is over*'. However, the said order was recalled recording, *inter alia*, that '*it comes to the notice of the court that CS No. 97/2021 dated 17.02.2021 under section 21(c)/29 of the NDPS Act has been submitted today by Civil*

Volunteer'. From such observation it appears that the charge sheet was dated 17th February, 2021 but was submitted on 26th February, 2021 i.e. after expiry of the period 180 days. In view thereof, the learned court erroneously recalled and cancelled the bail order.

The right to statutory bail is not a mere statutory right but is a right 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 (Paras 25, 27) O Supreme (SC) 586*].

Applying such proposition of law to the facts of this case, we are of the opinion that the order passed later recalling and cancelling the order granting bail is not sustainable in law and the petitioner entitled to statutory bail.

Accordingly, the present petitioner namely, **Samir Mandal** shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees ten thousand only) each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special 3rd Court, Malda under the N.D.P.S Act.

The application for bail being CRM 1372 of 2021 is, accordingly, disposed of.

Let the certified copies of the order sheets of the Special Case No. 67 of 2020 passed by learned Judge, Special 3rd Court, Malda under N.D.P.S Act be kept with the record.

[Tirthankar Ghosh, J]

[Tapabrata Chakraborty, J]