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C.R.M. 1549 of 2021

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Chanchal P. S. Case No. 78 of 2015 dated 26.02.2015 under Section 18 of the NDPS Act.

In the matter of : Alauddin

.... Petitioner.

Mr. Mritunjoy Chatterjee
Mr. Golam Nure Imrohi
Mr. Debapriya Majumder

...for the Petitioner.

Mr. Rana Mukherjee, ld. A.P.P.,
Mr. Santanu Chatterjee

...for the State.

This is an application for bail in connection with Chanchal P. S. Case No. 78 of 2015 dated 26.02.2015 under Section 18 of the NDPS Act at the behest of the petitioner.

It is one of the exceptional cases which has come before us where the ambiguity, uncertainty and inconsistency is made patent at the behest of the investigating officer. The case was initiated after having seized the poppy plant allegedly cultivated on the land of the petitioner who claims to be a co-sharer. The First Information Report revealed the charging Section as Section 18 of the NDPS Act which has three limbs and, in our opinion, all the three limbs stand on the independent footing. It is axiomatic to reproduce Section 18 of the NDPS Act which runs thus :

“18. Punishment for contravention in relation to opium poppy and opium. – Whoever, in contravention of any provision of this Act or

any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports, inter-State, exports inter-State or uses opium shall be punishable, -

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;
- (b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

- (c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.”

Clause (a) of Section 18 relates to the involvement of the small quantity with the punishment of one year or a fine which may extend to Rs.10,000/- or both; on the other hand, Clause (b) pertains to a commercial quantity having a rigorous imprisonment for a term which should not be less than ten years; Clause (c) is omnibus and general in nature and consists of the situation unrelated and/or unconnected with Clauses (a) and (b) of Section 18 of the Act.

It is beyond the cavil of doubt that the case is initiated after the seizure of the poppy plant cultivated on the land. It is imperative on the part of the investigating officer to specify the clauses contained under Section 18 of the Act instead of generalising such offence and giving scapegoat to the offender to wriggle out of the clutches of the rigorous provisions contained under NDPS Act. The Act was enacted with avowed of object and purpose to curb the menace of the drug which

has a greater impact on the development of the country and, therefore, the investigating officer has the onerous duty to investigate the matter with a sensitivity, alacrity and within the strict precincts of the statute. The object and purpose of the Act shall get frustrated in the event the investigating officer deals the matter in routine and casual manner without following the mandate of law. Whether the seized poppy plants were the commercial quantity or not is one of the factors to be decided and investigated upon and not in fashion or manner as has been done in the instant case. The manner in which the Sections are charged and the charge-sheet has been filed leaves no ambiguity in our mind that the investigating officer has acted reluctantly enuring to the benefit of the offender of the grievous crime. We feel that it is a fit case whether the Superintendent of the Police of District of Malda should be apprised of the fact as we have a strong feeling that there is something which played a pivotal role behind the curtain either at the initiation of the proceeding or during the investigation. The aforesaid observation has been made for the reasons stated hereinabove and we expect that the Superintendent of Police will take into consideration the order which has been passed herein and an appropriate proceeding shall be initiated against the investigating officer. The instant order shall also be kept in the service book of the investigating officer and be considered at the time of evaluation of his performance in the ACR (Annual Confidential Report).

Because of the vagueness of the allegations and without specifying the quantity of the poppy plant having allegedly seized we do not feel that further custody of the petitioner is necessary.

Accordingly, we direct that the petitioner, namely, Alauddin shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local to the satisfaction of the learned Judge, Special Court under NDPS Act, Malda, subject to the condition that the petitioner shall make himself available on each day of the listing of the matter before the Court and the default on any solitary occasion without any justifiable cause may disentitle him to the privilege of bail granted by this Court without any further reference to this Court.

With the aforesaid observation, the application for bail is disposed of.

(Harish Tandon , J.)

(Tirthankar Ghosh, J.)