

20.04.2021
Item No.22
Ct.No.28
Subha
Allowed

C.R.M. 1621 of 2021
(Via Video Conference)

In Re: An application for bail under Section 439 Cr.P.C in connection with NDPS Case No. 85 of 2018 and S.C No. 1(9)19 arising out of Jibanala P. S. Case No. 401 of 2019 dated 07-09-2018 under Sections 21(C)/24/29 of the Narcotic Drugs and Psychotropic Substances Act with added Sections 20(b)(ii)C/29 of the NDPS Act.

In the matter of : Rasid Lasker @ Rasid Laskar @ Bachhu ... Petitioner.

Mr. Sekhar Basu, Sr. Advocate
Mr. Diptanshu Basu
Ms. Suchismita Dutta

... For the Petitioner.

Mr. Sanjoy Bardhan
Ms. Manisha Sharma

... For the State.

The present application under Section 439 of the code of Criminal Procedure has been preferred by the petitioner in connection with NDPS Case No. 85 of 2018 and S.C No. 1(9)19 arising out of Jibanala P. S. Case No. 401 of 2019 dated 07-09-2018 under Sections 21(C)/24/29 of the Narcotic Drugs and Psychotropic Substances Act with added Sections 20(b)(ii)C/29 of the NDPS Act.

Mr. Basu, learned senior advocate appearing for the petitioner submits that the petitioner is in custody since

December 2018 and he has been implicated in this case on the basis of certain mobile phones being purchased by one *Rasida Sk.* who happens to be an accused and from whom recovery has been effected.

Learned senior advocate appearing for the petitioner further submits that one of the accused persons namely, *Antarul Sekh* was granted bail in CRM 8144 of 2019 and there has been no recovery from the present petitioner.

Mr. Bardhan, learned advocate appearing for the State opposes the prayer for bail and submits that there has been recovery of 1kg. 800 gms of heroin which is the subject-matter of the case and the said seizure was effected on two dates.

He also submits that the present petitioner has a history of being involved for dealing with narcotic substances. Previously, a case was registered against him being Sonarpur P. S. Case No. 1843 dated 28th October, 2018.

Learned advocate for the State emphasizes that on the 16th May, 2021, the matter was fixed at the stage of consideration of charge and till date, charge could not be framed for non-production of the accused persons.

In reply to the last contention advanced by the learned advocate for the State, a Photostat copy of a judgement was handed over to this court by the learned senior advocate for the petitioner, which reflects that the

present petitioner who was acquitted from the charges under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act and the records reflects that the petitioner was shown arrested in the instant case when he was in custody with the Sonarpur Police Station case.

We have taken into account the materials placed by the learned advocate appearing for the State particularly, the seizure lists, the CDR records(Call Details Records), the IMEI no. of the mobile phone by which the petitioner has been implicated as one of the accused allegedly purchased the said mobile phone from the shop which belong to the petitioner and his father.

We find that the communication, which has been relied upon, is for 22 seconds and no contraband was recovered from the possession of the present petitioner.

Having regard to the period of detention, the incriminating materials appearing against him and his complicity for which has been implicated in this case and the fact that he has been acquitted from the charges by the learned trial court in connection with the Sonarpur Police Station Case No. 1843 dated 28th October, 2018 and also the fact that it has been informed that till date no appeal has been preferred against the said order of acquittal and also another accused namely, Antarul Sekh has been granted bail by a Co-ordinate Bench, we are of the opinion that prima facie, the provisions of Section 37 of the NDPS Act are not

attracted and as such, the prayer for bail of the present petitioner is allowed.

Accordingly, we direct that the present petitioner 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 Additional Sessions Judge, 4th Court, Alipore, South 24 Parganas(Special Court under NDPS Act), subject to condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without further reference to this Court.

With the aforesaid observations, the application for bail being CRM 1621 of 2021 is, accordingly, disposed of.

We have been informed by the learned advocate for the State that due to non-production of the accused persons the charges could not be framed. We take a serious note over the fact that the accused has not been produced before the learned trial court on the date fixed either virtually or physically. We are not happy for the non-production of the accused persons. It is an impediment to a fair trial.

On such consideration, the S.P of the jurisdictional district, where the accused persons are kept in custody, should ensure the production of the accused persons on the date to be fixed by the learned trial court without any fail either virtually or physically and there should not be any breach of this direction. This order shall be immediately communicated to the SPs by the learned advocate for the State for compliance.

A photostat copy of this order shall also be communicated in jail to the accused persons for their information and information through the District Legal Services Authority(DLSA). The Secretary of the State Legal Services Authority is directed to communicate this order to the representative of DLSA where the accused persons are in custody in connection with this case to ensure that the order is complied with.

In addition to the aforesaid, a copy of this order should be immediately sent to District Judge, 24 Parganas(South) for information and appropriate action.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)

(Soumen Sen, J.)