

CRM No.1701 of 2021
(Via video conference)

28.04.21

(S.R.)

Sl.05

Ct.28

In re: An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Suti Police Station Case No.55 of 2017 dated 24.01.2017 under Sections 21(c)/29 of the NDPS Act;

And

In re: Asif Hossain @ Biki @ Biki Sk.

... petitioner.

Mr. Krishnendu Bhattacharya

Mr. Priyankar Ganguly

... for the petitioner.

Mr. Neguive Ahmed, APP

Ms. Z.N. Khan

...for the State.

Mr. Bhattacharya, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. He is languishing in custody for 4 years and 3 months and there is also no possibility towards early conclusion of trial.

He further submits that allegation of recovery of contraband substance from the petitioner's possession does not survive in view of the judgment dated 17th April, 2019 delivered in N.D.P.S Case No.36 of 2017. In the said conspectus further detention of the petitioner is not necessary. In support of such contention reliance has been placed upon a judgment delivered in the case of *Shaheen Welfare Association v. Union of India & Ors.*, reported in 1996 SCC (2) 616.

Mr. Ahmed, learned advocate appearing for the State opposes the petitioner's prayer and submits that earlier the petitioner's prayer for bail was rejected by a coordinate bench of this Court in CRM No.7464 of 2020 on 9th October, 2020.

He further submits that there are materials on record which clearly indicate the involvement of the petitioner in the alleged offence and as such, the petitioner is not entitled to bail.

Heard the learned advocates appearing for the respective parties and considered the materials on record. The petitioner is in custody for 4 years and 3 months. It appears that the judgment delivered on 17th April, 2019 in N.D.P.S. Case No.36 of 2017 was not considered earlier. A perusal of the said judgment clearly reveals that allegation of recovery of contraband substance above commercial quantity from the possession of the petitioner and one Saidul Ali could not be established and Saidul Ali was acquitted. In the said conspectus, we are of the opinion that the provisions of Section 37 of the NDPS Act are not attracted and further detention of the petitioner is not warranted in the facts and circumstances of the case.

Accordingly, the petitioner, namely, **Asif Hossain @ Biki @ Biki Sk.**, 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 Special Court under NDPS Act, Berhampore, Murshidabad subject to condition that he shall not leave the jurisdiction of Suti Police Station except for attending the trial court on the dates fixed for hearing. The petitioner shall also meet with the officer-in-charge of Suti Police Station once a week on and from 7th May, 2021 until further orders.

It is further directed that the petitioners shall not tamper with the evidence or intimidate the witnesses. In the event he fails to appear on the dates fixed for hearing without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without further reference to this Court.

Accordingly, the application for bail being CRM No.1701 of 2021 is disposed of.

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

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)