

**24.06.2021**

**(Via Video Conference)**

Court No. 28  
Item No. PB-22  
nandy/seth

**CRM 1975 of 2021**

(bail - allowed)

In Re: An application for **Bail** under Section **439** of the Code of Criminal Procedure filed on 19.02.2021 in connection with Sagardighi Police Station Case No. 330 of 2009 dated 12.09.2009 under Section 21 of the Narcotic Drugs & Psychotropic Substances Act. (Special Case No. 51 of 2009).

and

In the matter of: **Mujibar Rahaman @ Mojibar Sk.**

..... Petitioner

**Mr. Jisan Iqubal Hossain, Advocate**

.....for the Petitioner

**Mr. Sanjay Bardhan, Advocate**

**Mr. Nirupam Dhali, Advocate**

..... for the State

Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking the application is taken up for hearing.

The petitioner has filed the instant application for bail in connection with Sagardighi Police Station Case No. 330 of 2009 dated 12.09.2009 under Section 21 of the Narcotic Drugs & Psychotropic Substances Act.

Learned Advocate for the petitioner submits that petitioner has been languishing in jail for the last one year six months without any actual recovery of contraband from his exclusive possession. It is further submitted that previously he was arrested in connection with another NDPS case and after holding full trial, he has been acquitted undergoing detention of five years, when he could not be tagged with this case. It is also submitted that charge-sheet has already been submitted and this case is nothing but harassive one.

Learned Advocate for the State raises objection submitting that the petitioner was long absconder and he even did not surrender immediately after being acquitted from another NDPS case, and thus caused delay in the progress of the case. With this objection, Mr.

Bardhan, learned Advocate for the State, submits that this is not a fit case to grant bail.

The significant feature of this case is that the petitioner has been booked in the instant case without any actual recovery of contraband from his exclusive possession, which is inadmissible in evidence. This being the position, we find sufficient reason to take an exception to the rigor engrafted in Section 37 of the Narcotic Drugs & Psychotropic Substances Act. Complicity of the petitioner to the offence may thus be ascertained in trial upon appreciating the evidence already collected, but further detention is not justified.

Having considered the submission of both sides, we are inclined to grant bail to the petitioner.

As such, the prayer for bail is **allowed**.

Accordingly, the petitioner (Mujibar Rahaman @ Mojibar Sk.) 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, Berhampore, Murshidabad and on condition that petitioner shall ensure his appearance on each date of trial so that proceeding of the Court is not disturbed in any manner whatsoever; and further that he will not tamper the evidence, and intimidate the witnesses to be examined during trial.

We, however, clarify that failure to observe the conditions of bail, without any justifiable reasons, necessary order may be followed by the Trial Court without making any reference to this Court.

The application being **CRM 1975 of 2021** accordingly **disposed of**.

**(Harish Tandon, J.)**

**(Subhasis Dasgupta, J.)**

