

09.09.2021
Item no. 08
Court No.32.
S.De.
(rejected)

(Via Video Conference)

CRM 2095 of 2021

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure filed on 23.02.2021 in connection with Airport Police Station Case No. 151 of 2020 dated 16.09.2020 under Section 20(b)(ii)(c)/28/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of : Jagannath Niriki & Others.

.....Petitioners.

Mr. Ayan Basu, Advocate,
Mr. Prabir Kumar Das, Advocate,
Mr. Sumit Routh, Advocate,

.....for the Petitioners.

Mr. Sanjoy Bardhan, Advocate,
Ms. Manisha Sharma, Advocate,

.....for the State.

This is a case under Sections 20(b)(ii)(c)/28/29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

Learned advocate for the petitioners submits that in the present case, there has been seizure of entire plants of ganja thereby creating a doubt as to the amount of actual flowering tops seized and in support of his contention he refers to an order of Hon'ble Bombay High Court passed in Bail Application No. 2299 of 2019. He further submits that there

has been non-compliance of Section 52(A) of the N.D.P.S. Act. Furthermore, the petitioners are in custody for about one year.

Learned advocate appearing on behalf of the State submits that there has been compliance of Section 52(A) of the N.D.P.S. Act as is appearing in page no.68 of the case diary being the certificate issued by the Judicial Magistrate, 1st Court, Barrackpore dated 18.09.2020. Further, he submits that as far as the compliance of Section 52(A) is concerned, that is a post seizure exercise and the matters are to be assessed in the trial. He has also referred to decisions of this Hon'ble Court passed in CRM 9162 of 2020 and CRM 4858 of 2020.

We have heard learned advocates for both the sides at length and also perused the case diary. At the very outset, primarily, upon perusal of the inventory of seized narcotic substances at page 68 of the case diary, it is revealed that the same has been made in terms of Section 52(A) of the N.D.P.S. Act as is certified by the Judicial Magistrate. Furthermore, the findings of the Co-ordinate Bench of this Hon'ble Court made in CRM 91162 of 2020 shows that the procedure engrafted in Section 52(A) is a post seizure exercise to ensure from destruction of narcotic substance so that the seized material may not be misused. As regards the submission made by the learned advocate for the petitioners that there has been seizure of ganja plants including leaves,

seeds, stalks with reference to the order passed by the Hon'ble Bombay High Court, we have gone through the certificate of test of analysis at page 181 of the case diary wherein the exhibit shows that flowering tops of ganja was sealed in the packet. The seizure, as is revealed from the inventory, shows that there has been seizure of 1130 kgs of ganja which is of commercial quantity and Section 37 of the N.D.P.S. Act puts embargo in granting bail.

In view of the above, we are not inclined to allow the bail prayer of the petitioners.

Accordingly, CRM 2095 of 2021 is dismissed.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Bivas Pattanayak, J.)

(Sabyasachi Bhattacharyya, J.)