

30.07.2021

Court No.28
Item No.12
(Rejected)

Akd
&
Ab

CRM 2125 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with N.D.P.S. Case No. 126/2020 arising out of Raninagar Police Station Case No. 162 of 2020 dated 13.04.2020 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act;

And

In the matter of : **Mustak Habib**

...Petitioner

Mr. Tapodip Gupta.

...For the Petitioner

Mr. Ranobir Roy Chowdhury,
Mr. Sandip Chakraborty.

...For the State.

The 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 under Section 439 of the Code of Criminal Procedure after being arrested in connection with N.D.P.S. Case No. 126/2020 arising out of Raninagar Police Station Case No. 162 of 2020 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act.

The petitioner sought to take advantage of the lapses on the part of the Investigating Officer in submitting the charge sheet within the statutory period of limitation provided therefor. Obviously, the right to apply for statutory bail upon expiration of the statutory period of limitation is indefeasible and cannot be undermined by a subsequent course of action. The first and foremost thing which we think is required to be considered whether the charge sheet is filed within the statutory period of limitation or not.

According to the learned Advocate for the petitioner, the charge sheet was filed on 12.10.2020 when the application for statutory bail was filed and taken up on mentioning by the learned Advocate for the petitioner and there is a mistake in recording the fact that it was filed on 8.10.2020.

We had an occasion to peruse the certified copy of the charge sheet as well as the orders passed in the said proceedings. It is no doubt true that the charge sheet was prepared on 29.9.2020 being Charge Sheet no. 359 of 2020 and it transpires from the tenet of the order dated 12.10.2020 passed by the learned Special Judge under the NDPS Act that the said charge sheet was received by the Bench Clerk – II on 8.10.2020.

The contention of the petitioner is to be considered in the perspective of the records of the case maintained in the Court. If the record speaks that it has been received on 8.10.2020, merely because there was no reflection in the subsequent order passed by the learned Judge that it is so filed does not turn up to be so fatal as the mistake of the Court shall not cause any prejudice to any one. If there is non-recording of filing of the charge sheet or wrong recording of filing of the charge sheet on a particular date, cannot be projected in favour of the accused, if the record subsequently speaks of such filing on a different date. It is the reliability on the Court record, which is prepared by the officers of the Court unconnected with the prosecution, nor there would be any element of bias held against the petitioner for some reason or other. The Court record is sacrosanct and unless it is successfully demonstrated from such record that there is a mistake in recording the event of fact, the position would have been different.

Since the learned Special Judge under NDPS Act, who is in seisin of the record, have recorded that the charge sheet was filed on 8.10.2020, we do not think that because of the mistake in the order dated 12.10.2020 the indefeasible right appears to be paramount and dilutes the statutory provisions.

We thus do not think that there is any merit in the instant application for bail. The same is hereby **dismissed**.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)

